Journal of Prisoners on Prisons

... allowing our experiences and analysis to be added to the forum that will constitute public opinion could help halt the disastrous trend toward building more fortresses of fear which will become in the 21st century this generation's monuments to failure.

Jo-Ann Mayhew (1988)

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The *Journal of Prisoners on Prisons* publishes two volumes a year. Its purpose is to encourage research on a wide range of issues related to crime, justice, and punishment by prisoners and former prisoners. Donations to the *JPP* are welcomed.

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Prisoners and former prisoners are encouraged to submit original papers, collaborative essays, discussions transcribed from tape, book reviews, and photo or graphic essays that have not been published elsewhere. The *Journal* does not usually publish fiction or poetry. The *Journal* will publish articles in either French or English. Articles should be no longer than 20 pages typed and double-spaced or legibly handwritten. Electronic submissions are gratefully received. Writers may elect to write anonymously or under a pseudonym. For references cited in an article, the writer should attempt to provide the necessary bibliographic information. Refer to the references cited in this issue for examples. Submissions are reviewed by members of the Editorial Board. Selected articles are corrected for composition and returned to the authors for their approval before publication. Papers not selected are returned with editor's comments. Revised papers may be resubmitted. Please submit bibliographical and contact information, to be published alongside articles unless otherwise indicated.

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PREFACE

25 Years of the Journal of Prisoners on Prisons: Still Writing As Resistance

Justin Piché

> For 25 years, the *Journal of Prisoners on Prisons* (JPP) has been a prisoner written, academically oriented and peer reviewed, non-profit journal, based on the tradition of the penal press. It brings the knowledge produced by prison writers together with academic arguments to enlighten public discourse about the current state of carceral institutions. This is particularly important because with few exceptions, definitions of deviance and constructions of those participating in these defined acts are incompletely created by social scientists, media representatives, politicians and those in the legal community. These analyses most often promote self-serving interests, omit the voices of those most affected, and facilitate repressive and reactionary penal policies and practices. As a result, the *JPP* attempts to acknowledge the accounts, experiences, and criticisms of the criminalized by providing an educational forum that allows women and men to participate in the development of research that concerns them directly. In an age where 'crime' has become lucrative and exploitable, the *JPP* exists as an important alternate source of information that competes with popularly held stereotypes and misconceptions about those who are currently, or those who have in the past, faced the deprivation of liberty.
>
> – www.jpp.org

The first issue of the *JPP* went to print in 1988. In the quarter century that has followed, the journal has published 22 volumes and 34 issues – with another general issue forthcoming this year – documenting the experiences of imprisonment and the socio-politics of incarceration as prison populations across the world soared. Penal abolitionism (e.g. Sauvé, 1988) and reform (e.g. Dey, 2011), the colonization of indigenous peoples (e.g. Ms. Cree, 1994) and people of colour through imprisonment (e.g. Eribo, 2005), poverty, profiteering and incarceration (e.g. Ransome, 2011), the criminalization of women (e.g. Mayhew, 1988), victimization (e.g. Wright, 1998), capital punishment (e.g. Abu-Jamal, 1990/1991), political imprisonment (e.g. Flynn 1996/1997) and torture (e.g. Saeideh, 2010), marionization (e.g. Griffin, 1993) and solitary confinement (e.g. Bubba-B,

2006), health (e.g. Huckelbury, 2006) and mental health behind bars (e.g. Collins, 2008), (in)security (e.g. Larsen et al., 2008) and immigration detention (e.g. Lekarowicz, 2008), prison education (e.g. Salah-EL, 1992), carceral tours (e.g. Minogue, 2003), prison research (e.g. Taylor, 2009), prisoner writing (e.g. Hassine, 1999) and resistance (e.g. Bryden, 1990/1991), are among the many themes addressed by our contributors. While many of our authors come from the United States, the world's leading prison nation, and Canada where the journal is housed, we have also published pieces written by individuals incarcerated in Africa, Asia, Central and South America, Europe, the Middle East and Oceania, which reflects the global entrenchment of the deprivation of liberty.

The *JPP* and its readership owes a debt of gratitude to prison writers who have made visible their experiences and understandings of the world that many seldom encounter because of the significant barriers to, and real consequences for, exercising their right to free speech (e.g. McMaster, 1999). Bereft of many of the resources most writers take for granted and often perpetually under threat of retribution – whether it be from 'correctional' administration and staff, fellow prisoners, punishment fetishists outside prison walls, and the long list of other proponents of authoritarianism, pain and exclusion – their persistence and courage is remarkable (see Piché *et al.*, forthcoming).

With committed writers, along with the support of 1) our publishers and their staff who have provided advice on production matters, 2) the universities that have hosted the publication and provided the intellectual space for the project to flourish, 3) the members of our Editorial Board who have offered feedback to authors with the goal of enriching their contributions, and 4) the volunteers who have worked tirelessly on the various facets of our operations over the years, the important work of the journal has been made possible. As we recommit ourselves to working towards the eradication of state repression in all of its guises, the *JPP* will continue its project of *Writing As Resistance* (Gaucher, 2002).

ENDNOTES

* Portions of this short preface were presented as part of Justin Piché's opening remarks at an event celebrating the 25th anniversary of the *JPP* held on 3 May 2013 as part the *Critical Perspectives: Critical Criminology and Social Justice – Third National Conference* at the University of Ottawa. The event also featured remarks from Bob

Gaucher – a founding member of the journal's Editorial Board – who discussed the origins of the publication, as well as observations from *JPP* Associate Editors Charles Huckelbury and Susan Nagelsen on the importance of writing for prisoners and prison writing as an educational tool. The *JPP* would like to thank the Faculty of Social Sciences at the University of Ottawa for sponsoring this celebration through its Research Events Program.

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EDITORS' INTRODUCTION

Running As Fast As They Can

Susan Nagelsen and Charles Huckelbury

In Lewis Carroll's marvelous sequel to *Alice in Wonderland*, the young protagonist wonders what lies on the other side of the mirror over her mantel. She experiments and discovers a parallel world, inhabited by bizarre characters whose behaviours, and even their language, defy logical explication. Carroll uses frequent shifts in both time and space to move his story along, including many "mirror" references to opposites and time reversal. Although *Through the Looking-Glass* has come down to us as pure fiction, a closer reading will reveal the striking similarity between the story and the world into which contemporary prisoners have stepped.

A recent example will illustrate what we mean. The United States Supreme Court recently ruled that mandatory life sentences without parole for juvenile offenders violated the Constitution's Eighth Amendment prohibition against cruel and unusual punishment.[1] Angered at the Court's perceived interference in states' jurisprudence, various states modified their laws to reflect that displeasure, replacing the mandatory life sentences with mandatory minimum sentences that would run the lifetime of the juvenile offenders. Iowa, for example, substituted a sixty-year minimum for its former life sentence, requiring a juvenile offender one of us (Nagelsen) interviewed to remain in prison until she is seventy-seven years old before she is eligible for parole.[2]

This general issue of the *Journal of Prisoners on Prisons* (JPP) therefore examines the looking-glass world of incarceration, which is indeed a study in contradictions. Where else would an innocent person plead guilty to a crime he or she did not commit? The disturbing essay by Williams and Majoy presents a partial explanation, discussing when perjured or fabricated testimony exerts sufficient pressure to elicit a confession for a sentence substantially less than the one the defendant would have received upon conviction. And given the collusion involved, that conviction is a certainty. As the grand jury found, prosecutorial misconduct and police corruption presented a systematic effort by Los Angeles officials to garner convictions irrespective of guilt. There is no reason to assume that the zeitgeist in California is any different from other metropolitan areas across the country.

Examining the mass-incarceration policies in the United States, Forrest Lee Jones dissects California's infamous Three Strikes legislation, under

which relatively minor criminal offenses can result in sentences up to twenty-five years and perhaps life. Originally designed to remove from the street criminalized peoples with long histories of violent behaviour, the law morphed into a vehicle for job security for the prison guards' union. Driven by the abduction, rape, and murder of two children, the law catalysed public support to broaden the net of intended targets to include those guilty of petty theft and even "serious" misdemeanours. Jones meticulously illustrates both the fallacies and costs (in social and economic terms) of embracing such a draconian measure.

Jarrod Shook then demonstrates that the rebarbative policies enjoying such currency in the United States have been exported, to some degree, north to our Canadian neighbours. His thoroughly researched paper on warehousing Canadian prisoners by stuffing two men into cells originally designed for one demonstrates how policy decisions often have no trickle-down effect. Officials have a public face that presents genuine concern about their incarcerated citizens' welfare, but their subsequent actions – or inactions – tell a different and far more disturbing story, one that describes increased violence and recidivism.

Confirming that the American model has become the western hemisphere's standard, "Joe Convict" details the insidious means political entities in Canada are using to dismantle oversight of federal prisons. By co-opting those non-governmental organizations or eliminating their participation altogether, the government arrogates to itself the exclusive right to determine how federal prisoners will be treated, to what amenities they will have access, and even with whom they can communicate. Since isolation of the victim is the key to unilateral aggression, this tendency is even more alarming.

To understand how the evolution of such policy decisions poses an imminent danger to the incarcerated, one need look no farther than James Bauhaus' essay on the prison fire in Honduras. Versions of the fire's origin differ, but one fact is not in dispute: once the blaze erupted, the prison's guards fled, totally disregarding the lives of the men locked inside their cells. One can insist that a prison cannot open its doors and permit mass escapes, but no one can argue that the lack of contingency planning and the unprofessional behaviour of the guards is either understandable or excusable unless the prisoners are viewed as subhuman and therefore unworthy of consideration.

Gwendolyn Levi's essay on changing the image of women prisoners is therefore a much-needed corrective to the kind of corrosive philosophy that supports tragedies like the one in Honduras. Recognizing that older prisoners have needs that younger ones do not, she outlines a program, Women of Wisdom (W.O.W.), which focuses on those needs, incorporating outside assistance from medical experts and other volunteers dedicated to wellness and a more holistic approach to healing.

And yet, as encouraging as such organizations are, they continue to be opposed by an entrenched bureaucracy impervious to obvious paths to both efficiency and rehabilitation. Dean Faiello describes the evisceration of programming in one New York prison, making it impossible for men whose classes in anger management and substance abuse are court ordered. Wait lists often extend for durations longer than some sentences, guaranteeing that prisoners serve their maximum sentence rather than making parole at their minimum. They then return to the street with their emotional and psychological needs unmet, which, of course, also increases the probability of coming into conflict with the law. Even a proven program like Alternatives to Violence, run entirely by volunteers, has been compromised by the lack of a single security officer. These cuts have been so severe that dedicated and seasoned counsellors have resigned in frustration.

From his vantage point on California's death row, Ramon Rogers confirms that the arbitrary nature of prison rules and regulations is not restricted to the East Coast of the United States. Harassment of prisoners by guards has always been always been a part of prison life, but Rogers' story takes it to a new level. Cited for everything from his pressed uniform to performing his assigned duties, he persistently refuses to roll over and play dead, insisting on using the prison's grievance procedures to redress the spurious infractions he has received. Most men and women behind the walls know how useless these procedures are, often resulting in dismissal for lack of cause or simply getting lost in the black hole of institutional indifference. Rogers' successes must, therefore, be considered anomalies, although the other options are few and unpleasant to consider.

Janus V. then offers a tour of some of those options, specifically, serving one's sentence in minimum custody status and working outside of prison or going to the "hole" as a result of untreated depression brought on by the termination of her work project. Once back inside, all pretence to being free evaporated, with the expected result. Janus tells a poignant story, one

simultaneously filled with pain and resurgent hope after embarking on a new therapeutic regimen. Hers is a testament to perseverance and the strength of the human spirit that must adapt to survive in the worst possible conditions.

Victor Becerra's astute analysis of the importance of selecting a new cellmate reminds us of how challenging it is for two people to coexist in a space smaller than the average home's bathroom. Citing stark examples of personality differences, Becerra takes us into the cell and reminds us that personal difficulties in the outside world can often be resolved by simply walking away from the other person. But what happens when that is impossible because you share a cage with the other party? Becerra explores the ins and outs of finding someone compatible, which is the best-anticipated outcome. He follows with a disturbing recitation of his dealings with his court-appointed attorney, again a familiar scenario to anyone with experience with the criminal justice system. Anyone who continues to think that all criminal representation is adequate will quickly be disabused of that idea after reading about Becerra's misadventures.

Although the mechanisms – and machinations – that the state employs to incarcerate its citizens are important, the *JPP*'s focus continues to be on the conditions behind the walls, as well as how men and women cope with captivity. Daniel Johnson's essay on entrepreneurship details the influence of an NGO that sponsors a program to teach business-oriented skills to prisoners, who can then apply them while in prison. These "MBA boot camps", as Johnson refers to them, have been integral to his own survival by providing the necessary tools to open an independent publishing house specializing in prisoners' art and writing. Although not many prisons permit a prisoner to form or run a business while incarcerated, Johnson's facility appears to have a different and more realistic perspective.

Release is, of course, also a fact of life for approximately 95 per cent of the men and women in prison. After serving fifteen years, Jesse Self was paroled, and he provides an absorbing account of his reaction to being back in the "real world". Quickly realizing that prison subverts one's ability to make choices, simply because all relevant decisions are made for the prisoner, Self cannot decide which flavour of ice cream he wants. Mundane trips to the mall for clothing become frustrating for someone whose invariant wardrobe has been provided for a decade and a half. Add to that suffering motion sickness and the damage inflicted by long-term imprisonment becomes inescapably obvious.

In our *Response* section, Robert Johnson, Professor of Justice, Law and Society at American University, closes this issue by providing a chilling description of the *danse macabre* that has become the execution process in the United States. A veteran of many battles in capital cases, Johnson's descriptive power, along with his personal and professional insight take us from the death watch cell in which the condemned waits to be killed, through the absurdity of ordering a last meal, to the execution itself, during which a chemical cocktail rejected by veterinarians is injected into a living human being. In so doing, he lifts the curtain on America's dirty secret: "humane" executions are anything but.

ENDNOTES

1 *Miller v. Alabama*, 567 U.S. ___, 2012.

2 See Nagelsen, Susan (2008) *Exiled Voices: Portals of Discovery*, Henniker (NH): New England College Press, pp. 3-14.

ABOUT THE EDITORS

Susan Nagelsen is the director of the writing program at New England College in Henniker, New Hampshire. Her book, *Exiled Voices: Portals of Discovery,* is a collection of writings by women and men in prisons across the United States, gathered during research and fieldwork. The book is used in writing curricula in a number of colleges and universities. She has also published short stories, most recently with BleakHouse Press, one of which won an award in 2009 for the best collaborative fiction. Susan has presented papers at international conferences on criminal justice issues and is the co-author of two writing handbooks now used at New England College.

Charles Huckelbury served 38 consecutive years in maximum-security prisons until he was paroled in 2012. During his incarceration, he taught English literature and writing for a community college and was a contributing writer for the *Concord Monitor* in New Hampshire. He has received four PEN awards for fiction and nonfiction and is the author of two books of poetry, *Tales from the Purple Penguin* and *Distant Thunder*, both published by BleakHouse Press. He writes a monthly newsletter for the Prisons Foundation in Washington (D.C.).

Convictions of the Innocent

Dortell Williams and Tony Majoy

> Innocent men wrongfully convicted are countless.
>
> – Max Hirschberg, *Convicting the Innocent*

"I'm innocent ... really!" Almost clichéd, it is a running joke both in and out of prison. Everyone in prison is innocent, let them tell it. Yet, a surprising number of studies reveal that many are, indeed, really innocent. In the unrelenting clamour for revenge against prisoners, it is this particularly vulnerable group, which falls forgotten to America's war on crime: the wrongfully convicted.

Untold billions flow into the black hole of prison expansion, while funds to represent indigent citizens are drastically diminished. This translates into less case investigation, less resources for trial preparation and inadequate defences that amount to nothing more than a shorter rail line towards conviction, particularly for the indigent innocent. Being convicted of a crime one is innocent of is a living nightmare. In whatever way the nightmare unfolds, it is a nightmare in which the silent screams of the innocent reverberate throughout the country. If you listen carefully, the injustice could chime as close as your nearest courthouse.

If asked, some people might be hard pressed to define justice, but the following stories give a startling description of injustice and its grim reality as it wades its way through the country we so unreservedly call "the land of freedom".

For instance, in the disquieting case of *Herrera v. Collins*,[1] Leonel Herrera, a Texas death row prisoner, appealed his conviction to the U.S. Supreme Court on the grounds of newly discovered evidence that he believed proved his innocence. In his opinion denying the petition, Chief Justice William Rehnquist wrote that the execution of an innocent person would not necessarily violate the U.S. Constitution.

A more surprising element in the matrix of wrongful convictions are false confessions. Indeed, why would anyone make a false confession? In 2011, Helena, Montana resident Berry Beach was released from prison after 28 continuous years for the 1979 murder of his high school classmate, Kim Nees, a murder he confessed to but did not commit. Steven Drizin, a criminal law professor at Northwestern University School of Law and the director of the Center on Wrongful Convictions, studied more than 250 cases of proven wrongful convictions. He describes for *USA Today* how some murder

investigators prematurely presume the guilt of a suspect and in their zeal to prove their own hunch they will zealously pursue a confession (Adams, 2011). Still, why would anyone confess to a crime they are innocent of? Drizin describes an eerie sounding practice wherein investigators begin to make direct or implied threats of long sentences combined with promises of leniency.

Promises of leniency are what turned an innocent 14-year-old Chicagoan named Terrell Scott. After twelve hours of intimidation by burly white officers standing over him and lurching in his face, being illegally refused an attorney, and being deprived of his right to call home, Scott readily confessed. These practices became so routine in Chicago that the Windy City was dubbed "The False Confession Capitol of the U.S." Chi-town has twice the number of false confessions as the U.S. federal system (False Confession Capital, 2012).

Like Scott's, the vast majority of false confessions are made by young black men. Scott was arrested at fourteen and was promised that he could go home to his mom if he simply confessed. When he complied, he did not go home that night as promised. In fact, Scott did not go home until he was thirty-four years old. As has been shown in many cases, investigators supplied Scott the specific details of the case to aid the so-called validity of the confession. Thank goodness for checks and balances; the courts have overturned 85 of Chicago's confession cases since 1989, in large part due to investigations by the New York-based Innocence Project. In some of the more flagrant cases prosecutors ignored exculpatory evidence, including concrete DNA evidence (False Confession Capital, 2012). Disquieting to say the least.

According to University of Virginia law professor Brandon Garrett, author of the 2011 book, *Convicting the Innocent*, of the 250 cases he reviewed, 40 of the confessions contained details for crimes they did not commit (Adams, 2011). Not one of the confessions was sufficiently recorded for outside scrutiny. One defendant, Beach, was sentenced to 100 years in prison. Scott was sentenced to fifteen years to life. The U.S. Supreme Court estimates that 94 to 97 per cent of criminal cases end in plea deals, where people must at least partially admit guilt[2] (*Prison Legal News*, 2012b). In a criminal justice system that relies so heavily on admissions of guilt, any undue influence by authorities is cause for concern.

These are extreme sentences, particularly for an innocent person. Now imagine a wrongful conviction resulting in a death sentence. As of 1998,

the latest data accessible to the authors, there have been 75 known cases of people wrongfully sentenced to die in America (McCormick, 1998).

Chicago's death row is where Dennis Williams and Verneal Jimerson sat for 18 years. They, along with two others, were convicted of the heinous abduction and bloody murder of a young and loving couple. DNA finally cleared the two black men. Yet, allegations of racial discrimination – among police, prosecutors and jurors – continue to muddy what residual of trust blacks have of Chicago's justice system.

In fact, with blacks disproportionately subject to arrest in America (one of every four), closely followed by Latinos, minorities have long felt that they are the cash cow of corrections, a misnomer for the U.S. prison system. The 1980 case of Clarence Bradley, a black American, accused of killing Cheryl Dee Ferguson, a blonde, hazel-eyed Texas student, only serves to add credence to this belief. A white officer allegedly told Bradley and a white janitor that one of them would hang for the murder. The white officer then turned to Bradley and said plainly, "Since you're the nigger, you're elected". After a long and dark ten-year struggle, it was proven that prosecutors suppressed exculpatory evidence against Bradley and he was eventually freed (McCormick, 1998; Radelet *et al.*, 1992).

In California, a false confession and racial prejudice converged to make for one of the Big Bear's most recent egregious cases of injustice. Brian Banks had aspirations of becoming a professional football player. With growing interest from the National Football League, his aspirations were a real possibility. The 6'4", 225 pound, 16-year-old had big dreams. But those dreams were quickly dashed when he was falsely accused of rape and facing a sentence of 41 years to life. With little or no investigation, his public defender advised Banks to plead guilty because a jury of his so-called peers would likely convict him because of his size and the colour of his skin.

He was given just ten minutes to make a decision that would affect the rest of his life. All too familiar with the most likely outcome for black Americans in U.S. jury trials, Banks, despite his innocence, could not muster the faith needed to proceed with trial. He pleaded guilty for a lesser sentence. After being cleared later, when the victim came forward to admit she lied, the case went national (Levinson, 2012; Powers, 2012).

In May 2012, Northwestern University joined the University of Michigan to conduct a study on wrongful convictions. Of the 900 men studied, half were black, and the vast majority of their convictions were due to faulty

eyewitness identifications, particularly in sexual assault cases (Levinson, 2012). The fact that eyewitness testimony cannot always be trusted was drawn to public attention earlier in this century by Harvard's professor of experimental psychology, Hugo Musterberg, who staged a "shooting" in his classroom to prove to sceptical students that witnesses to the same event do not tell the same story (Radelet *et al.*, 1992).

Leslie Stahl, the grey-haired anchor for the news magazine *60 Minutes*, was shown various tricks used by law enforcement in eyewitness cases and a slew of common mistakes were revealed as to how flagrant errors are made by earnest victims in police line-ups. When Stahl pointed out the face of the man whom she had seen moments before in a video, she was certain she had identified the right person. However, the only thing that was certain was that she had picked the wrong person (False Confession Capital, 2009). As simple as that, a life can be destroyed. These are facts with which we must live in a fallible world. The only remedy to reduce mistakes in such an error-prone environment is to proceed with caution, scrutinizing the evidence, asking hard questions and making sure that in the task of our civic duty, guesswork, conjecture and above all, prejudice is absent, particularly among those that show such inclinations in a jury panel.

Oregon recently lent us hope by being the first state in the nation to require specific guidelines for trials involving eyewitness identification. After reviewing the latest science, past errors, police and prosecutorial misconduct, new standards were ordered. Oregon admissibility guidelines now require that police line-ups be conducted by someone who is blind to the identity of the true suspect; others in the line-up must resemble the physical description given by the witnesses and photos of potential suspects must be shown one at a time, not in groups. Police and prosecutors must also declare the circumstances for which they obtain any witness descriptions or identifications. For instance, in the Oregon case that spawned these new guidelines the witness had been heavily medicated by doctors prior to police suggesting who they believed the perpetrator was (Murphy, 2012).

Another path to wrongful convictions is mistaken or charlatan expert witnesses. Such was the case with 28-year-old Glen Dale Woodall, a West Virginia cemetery worker. Woodall was accused, convicted, and imprisoned for the brutal kidnapping and rape of not one, but two women. He was sentenced to two life sentences and an additional 325 years to cement an already sealed fate of death behind bars. The linchpin in Woodall's

conviction was not hard evidence, such as clothing from one of the victims or possession of property that belonged to one of the victims, or even an eyewitness. It was the state's medical examiner, Fred Zain, who testified, based on his personal experience, that Woodall's semen matched that of the specimen found on both victims.

Expert witnesses are often afforded nearly unquestioned credibility in court hearings with juries. They are believed to be totally impartial, infallible and on the exclusive side of science, nothing more. But as renowned defence attorney Thomas Mesereau, Jr. was quoted in his 2007 defence of music producer Phil Spector, the prosecutor's office "has the sheriff's department; the crime lab; the coroner's office. Their forensics experts [are all] paid for by the taxpayer". They are by nature of the business hired guns that want to continue to be hired, again and again. And to express balance to what are often infinite resources by the state, Mesereau stated: "The prosecutor is used to bowling over a poor defendant... When they occasionally run into a wealthy defendant... what [the wealthy defendant buys] is fairness" (Deutsch, 2007).

The expert testimony of medical examiner Zain not only locked Woodall away for life but also hundreds of other rape and murder defendants for the state of Virginia and later Texas. The problem was that Zain was flat out wrong in the majority of his "expert" opinions. After nearly five years of incarceration, Woodall's attorney took a shot in the dark and had a DNA test of Woodall's semen compared to the specimen held in evidence. Woodall's innocence was conclusive.

The West Virginia supreme court later ordered an examination of Zain's expert testimony in some 4,500 other criminal cases in two states. The result was that Zain's testimony was systematically and scientifically deficient. The court made the following ruling: "Any testimony or documentary evidence offered by Zain, at any time, in any criminal prosecution, should be deemed invalid, unreliable and inadmissible" (Abu-Jamal, 1995). According to a 2003 U.S. Justice Department report, some 3,000 criminal cases were thought to be affected by flawed science and skewed expert testimony. During that same period approximately 13 lab technicians across the country had made significant scientific errors that tainted criminal prosecutions (Abu-Jamal, 1995).

Following the May 2012 study of wrongful convictions jointly conducted by Northwestern University and the University of Michigan, research

concluded that an unacceptable number of convictions are being caused by police and prosecutorial misconduct, or what the average person might call lying and cheating (Gross, 2012).

The annals of wrongful convictions are replete with cases of prosecutorial misconduct. In a 2010 study conducted by the Northern California Innocence Project at the Santa Clara University School of Law (a Veritas Initiative), research revealed a litany of preventable errors in the court arena. This comprehensive study of judicial findings detailed more than 700 cases of prosecutorial misconduct that resulted in the innocent being wrongfully convicted and some otherwise solid cases being compromised and thrown out. A summary of their findings revealed:

- In 102 cases, courts found that prosecutors committed misconduct. Courts found 130 instances of misconduct in those 102 cases.
- In 26 of the cases, the findings resulted in the setting aside of the conviction or sentence, mistrial, or barring of evidence.
- In 76 cases, the courts nevertheless upheld the convictions, ruling that misconduct did not alter the fundamental fairness of the trial, yet misconduct did occur.
- In 31 other cases, the courts refrained from making rulings on the allegations of prosecutorial misconduct, holding instead that any error would not have undermined the fairness of the trial or that the issue was waived. Still, misconduct was present (Veritas, 2010).

A summary, in pertinent part, of the findings from 1997 through 2010 showed that in more than 800 cases, courts found that prosecutors committed misconduct. In 202 cases, the finding resulted in setting aside the conviction or sentence, mistrial or of evidence. In more than 800 cases of misconduct, 107 prosecutors were found to have committed misconduct more than once, two were cited for misconduct four times, two were cited five times and one prosecutor was cited for misconduct six times. Prosecutors who committed misconduct multiple times accounted for nearly a third of all cases of misconduct (Veritas, 2010).

Misconduct in these cases included failure to turn over favourable evidence to the defence, presenting false evidence, engaging in improper examinations, making false and prejudicial arguments, violating defendants' Fifth Amendment right to silence, and discriminating against minorities in

jury selection. In all, there were 34 findings of misconduct in these cases, including six findings that prosecutors failed to turn over favourable evidence to the defence. In some cases, the rulings came in the midst of trials and in others the rulings came years after conviction.

An estimated 700 to 1,000 drug prosecutions were also dismissed or dropped because prosecutors in the San Francisco District Attorney's Office failed to disclose damaging information about a police drug lab technician. In May 2010, Superior Court Judge Anne Christine Massullo found that prosecutors violated the constitutional rights of a vast number of defendants by failing to disclose to defence attorneys the problems relating to the cocaine-skimming drug technician. The judge found that a memo written by deputy district attorney Sharon Woo, expressing concern that the lab technician was an unreliable witness, proved that prosecutors "at the highest levels of the District Attorney's Office" were well aware of the situation, but this crucial information was never forwarded to the defence attorneys involved in these cases that relied on the technician's work (Veritas, 2010).

The pattern of corruption and lack of integrity continued in the federal prosecutions brought against executives of California-based Broadcom Corporation. In 2009, U.S. District Court Judge Cormac Carney dismissed charges against Broadcom's former chief financial officer, William Ruehie, and company cofounder, Henry T. Nichols III, on the grounds that the prosecutor, Andrew Stolper, intimidated witnesses. The charges included drug trafficking, possession of large amounts of illegal substances, along with a number of illegalities related to their enterprise. In 2010, Carney dismissed additional charges against Nichols (Pfeifer, 2010; Ridolfi and Possley, 2010; Veritas, 2010).

In November 2010, more than a quarter century after Bobby Maxwell was convicted and sentenced to life in prison, the Ninth Circuit U.S. Court of Appeals ordered prosecutors to release him or give him a new trial. The reason cited was due to appalling prosecutorial misconduct (Savage, 2012). In the decision authored by appeals court jurist Richard Paez, the court found that the prosecution had failed to turn over impeachment evidence to Maxwell's lawyers and failed to correct false testimony from its star witness, infamous jailhouse informant Sidney Storch. Judge Paez wrote, "The prosecutor's failure to disclose this impeachment evidence undermines confidence in the outcome of Maxwell's trial… The prosecutor's failure to correct Storch's testimony... was prejudicial".[3]

The prosecutor assigned to the case was former Los Angeles deputy district attorney Sterling Norris. The appeals court complained that Norris had failed to disclose evidence of benefits given to Storch and when Storch lied about them, Norris failed to correct his false testimony. The finding was the second case in which Norris has been cited for misconduct. The decision ordering a new trial or for Maxwell's release is among 26 court rulings in 2010 identified by the Veritas Initiative where prosecutorial misconduct was deemed harmful, that is, the conduct undermined the integrity of the convictions, caused mistrials, or evidence to be barred, and cost taxpayers millions in court and custodial expenses.

Maxwell was arrested in 1979 and charged with the murders of ten men in downtown Los Angeles. After a nine-month trial, Maxwell was convicted of two counts of murder and one count of robbery, largely stemming from the testimony of Storch, who claimed Maxwell confessed to him in a jail cell. The only physical evidence against Maxwell was a palm print found on a public bench near the body of one of the victims, a public bench that thousands of other Los Angeles residents had also touched.

"Here, the prosecution itself admitted that the evidence against Maxwell was weak, that Maxwell had consistently maintained his innocence, and that the police testimony about the date of the palm print was speculative… The prosecution failed, however, to disclose multiple pieces of impeachment information that could have been used to undermine the credibility of Storch", the judge opined in *Maxwell*. In 2004, the Ninth Circuit U.S. Court of Appeals also set aside the murder conviction and life sentence of Timothy Gantt, also due to Norris's failure to turn over evidence to the defense.[4]

The widespread problem of police misconduct, to the extent of absolute corruption, could not be better exemplified than that of the Los Angeles Police Department Rampart Scandal. Think fictional tales such as *Training Day*, on meth, *Lakeview Terrace*, on steroids, or *CRASH*, on rocket fuel. The story of scandal had been years in the making before it all unravelled in 1999, when elite officer Rafael Perez, who had been sponsored to enter the CRASH unit (Community Resources Against Street Hoodlums). Sponsorship by a respected member of the CRASH team was required before an outsider could enter into the intricacies of the exclusive network. Sammy Martin, a close friend of Officer David Mack, vouched for Officer Perez. Among the more notable crimes ascribed to the unit were robbing suspects and citizens, at least one bank robbery (by Officer Mack), collaborating

with street gangs in criminal activity. Some officers, such as Mack, were literally gang members themselves. Yet, most relevant to this paper are their crimes involving the framing of suspects.

Members of the unit routinely planted drugs on suspects, enemies and citizens. They shot unarmed suspects and planted what they called "drop guns" on them. Adding to their long list of crimes, they conspired to falsify reports to protect the criminal unit. While citizens, suspects, and defendants had been complaining about the unit's illegalities for years, it was not until repeated thefts from the L.A.P.D. evidence locker, including nine *pounds* of powdered cocaine that went missing, that Perez came under suspicion (Reavill and Brown, 2000). The investigation peeled off one criminal act after another, layer by layer, involving other officers, including a sergeant. When Perez was finally arrested and agreed to "sing like a bird" on his cohorts, investigators were astounded by a song that lasted nearly 14 hours before they wearily concluded the session for the night (Boyer, 2001).

The *Los Angeles Times* called it "the worst corruption scandal in L.A.P.D. history". Indeed, it was worse than Rodney King in 1991, worse than a history of racial profiling and repeated accusations of racism since its 1920s chief, Louis Oaks, who was a verified member of the Ku Klux Klan. Now, under the leadership of a black man, Bernard Parks, the department was experiencing another dark era (Boyer, 2001).

The most heart-wrenching event of evidence planting was the case of 19-year-old Javier Francisco Ovando. In 1996, Officer Perez and his partner, Nino Durden, were on stakeout. Ovando had walked up and accidentally surprised the officers, who responded with a hail of bullets. Ovando was critically struck in the head and chest before they realized he was unarmed. As Ovando lay bleeding out, Officer Durden, according to Officer Perez, placed a drop gun near Ovando. Their cover story was that Ovando was a vicious, gang-banging cop killer who had burst in on their post with the intent to assassinate them. Ovando, a Honduran who speaks very broken English, survived the encounter, but was paralyzed as a result and confined to a wheelchair. During trial for attempted murder of the officers, among other charges, he was convicted after Officer Perez convincingly testified against him. The judge threw the book at Ovando for the blatantly irreverent crime and for his apparent lack of remorse.

Upon the revelation that it was the officers who were in the wrong, it was the police department heads, not the district attorney's office or a defence attorney,

who sought Ovando's immediate release. According to Officer Perez, Ovando was just one of many such victims. A Blue Ribbon Rampart Review Panel was created in 2003 to investigate what went wrong. Among numerous criticisms, the panel found that there existed a long-time lack of sufficient checks to prevent officers from lying or fabricating evidence (City Task Force, 2006).

As the lawsuits go forward, it is estimated the city will be forced to pay hundreds of millions for its officers' criminal activities. Over 100 criminal cases have been overturned thus far, and an estimated 4,000 more cases may still be affected. In 2002, in an extraordinary measure to regain public trust in the justice system, following the Rampart Division scandal, Governor Gray Davis signed into law Senate Bill 1391. This bill gives prisoners sentenced to life without the possibility of parole or death the right to seek all discovery materials that a defendant would have been entitled to during trial for his or his attorney's review, because, in spite of Officer Perez's confessions, no one really knows the true extent of the damage.

In his signing statement accompanying SB 1391, Davis wrote, "As governor, I strongly support the hard working men and women of law enforcement. However, nobody is above the law and in the rare cases where governmental officials deceive the courts, there must be appropriate remedies" (Capitol Connection, 2002, p. 3).

Officer Perez, for his part, stated that "The line between right and wrong became fuzzy and indistinct... I stepped over that line landing with both feet sometimes on innocent people..." (Reavill and Brown, 2000). The L.A.P.D. was placed under a federal consent decree or what we call formal probation (L.A.P.D., 2006).

As the fallout of the L.A.P.D. scandal waned, the Los Angeles County Sheriff's Department made headlines of its own secret, illegal activities that deepened distrust within the community, a community of primarily residents or colour. In what they called "Operation Any Booking", there was a competition among the rank and file to arrest the most people within a specific 24-hour period. There was also "Operation Vehicle Impound", a competition to seize the most cars. Just good ole boys having fun. The teams involved sheriff's deputies from numerous cities: Lakewood, Bellflower, Paramount, Artesia, and, of course, Los Angeles, to name a few (Glover and Lait, 2007). It can be safely assumed that with most impounds an arrest occurred. So the question with this unethical, and potentially illegal practice is, was every arrest above board?

Los Angeles Public Defender, Michael P. Judge, told the *Los Angeles Times* that he worried the games might prompt deputies to make illegitimate arrests to boost their statistics. And when we think about it, what would the law enforcement community be without criminals? What would the drug enforcement community be without drugs to interdict? That is to say, if they were to completely eradicate the drug market, would that not prove adverse to them? What would prisons be without repeat offenders? Could that explain why prisons have such a high recidivism rate, while rehab centres and religious institutions have a much higher success rate in addressing the same human foibles? It is, then, not inconceivable that within these law enforcement agencies thrives an attitude condoning such underhanded practices for, among other motives, job security. The games were exposed by a leaked email of management officials who appeared to promote the competition (Glover and Lait, 2007).

Injustice manifests itself in court errors, biases and interference as well. The 1996 case of Armenia Cudjo is an example of how an erroneous ruling can make the difference between a wrongful conviction or a deserved acquittal. Armenia Cudjo was convicted of viciously murdering Armelia Produka, whose partially clad body was discovered in her apartment in the California desert community of Littlerock. A hammer stained with blood residue was found nearby. There was evidence that Armenia Cudjo knew the victim, and was at her home earlier in the day. He confessed to having sex with Produka, but adamantly denied having killed her (Egelko, 2012).

Armenia Cudjo told police that he believed his brother, Gregory Cudjo, was Produka's killer, adding that he confessed to committing the crime. A physical description given by Produka's younger brother fit Gregory Cudjo. During trial, over a year later, while Armenia Cudjo waited in the county jail, John Culver, a neighbour, told the sheriff, the trial lawyers, and anyone who would listen, that while Armenia Cudjo was being detained in jail for questioning, Gregory Cudjo had confessed that he had killed Produka. At trial the judge refused to allow Culver to testify (Egelko, 2012). The question in such cases is why? Why deprive a jury of any of the facts? Yet, decisions like this are common in courts all across the nation.

The Ninth Circuit Court of Appeals subsequently ruled that Armenia Cudjo was denied the right to present a defence. When given the opportunity in 2008, Gregory Cudjo confessed to the killing and confirmed that he had previously admitted to killing Produka. After 12 years on death row, Armenia Cudjo was finally vindicated (Egelko, 2012).

Not so fortunate was California prisoner Omer Gallion. Gallion was assigned to the docket of U.S. District Court judge Percy Anderson, in the Central District of the Golden State. Judge Anderson has a history of allowing potentially meritorious petitions to grow stale – for years. Gallion filed a habeas corpus petition claiming he had been wrongfully convicted. A magistrate judge recommended that Gallion's petition be granted. However, Gallion died in prison six years later, in 2010, while awaiting for judge Anderson to act. In July 2011, a legal publication reported that judge Anderson had sat on habeas petitions for periods ranging from five to eight years after magistrate judges had recommended relief (*Prison Legal News*, 2012a).

While defence attorneys can hardly force a judge to be fair, it is when defence attorneys themselves drop the ball that the situation is exacerbated for the defendant. The American mainstream press has repeatedly reported on stories of defence attorneys sleeping in court, appearing in court inebriated or even high, but it does not end there.

Ponder the death penalty case of Cory Maples: the Alabama death row prisoner lost his right to appeal after the law firm representing him misplaced his court motion somewhere in their own mailroom. As a result, Maples, who was convicted in 1997 of a double murder, was barred from appealing his conviction. And while Maples maintains his innocence, at least in part, the courts did not want to hear it; he was late and lacked diligence in the pursuit of proving his case, the courts repeatedly opined. However, it was not the neglect of Maples, but that of his attorneys. Still, as representatives of the client, anything that the defence counsel does is owned by the client, even if he is locked up thousands of miles from his attorneys and has no control whatsoever over what the attorneys do. The attorney and client, as the court proceedings go, are one and the same.

Yet, in a rare exhibition of compassion (and fairness), the US Supreme Court gave Maples a break.[5] Writing for the majority, in a 7-2 decision, Justice Ruth Bader Ginsberg said, "No just system would allow a missed deadline to be held against the inmate... Maples was disarmed by extraordinary circumstances quite beyond his control". He was convicted of murdering two of his companions after a night of drinking, yet, as Ginsberg noted, "His inexperienced and underfunded attorneys failed to develop and raise an obvious intoxication defense, did not object to several egregious instances of prosecutorial misconduct and woefully unprepared for the penalty phase of his trial".

Justices Antonin Scalia and Clarence Thomas dissented and complained, among other issues, that such a ruling would open the flood gates to other prisoners, who, perhaps, were neglected or abandoned by their counsel. The ruling was limited to Maples (Liptak, 2012). It is here where the variance between having an overwhelmed and underfunded public defender or well paid and enthusiastic court advocate can make the difference between life and death, or freedom and life imprisonment.

There are many critical stages in any criminal case. Perhaps one of the most critical is when there is a jailhouse informant, otherwise known as a snitch. The case of Maxwell, above, offered a glimpse of the problems with snitches. They almost always have an ulterior, personal motive; they are highly unreliable and all too often, the terms for which they are testifying (i.e. whether they are receiving unknown, untold promises, is hardly ever fully revealed). The details of these and other problems were enumerated in yet another epic scandal involving the Los Angeles criminal justice system.

The report of the 1989-1990 Los Angeles County grand jury, *Investigation of the Involvement of Jailhouse Informants in the Criminal Justice System in Los Angeles County* (IIJI), began, "On or about October 24, 1988, [when] a jailed informant demonstrated for the Los Angeles County Sheriff's Department how he and others could obtain confidential information and then fabricate confessions of fellow prisoners". Thousands of pages of documents and other evidence were reviewed by the grand jury, over 120 witnesses testified, and 147 exhibits were introduced into evidence. Witnesses included several other jailhouse informants, judges, district attorneys and prosecutorial staff, county and state public defenders and members of the bar, police and Sheriff's department, custodial employees and private citizens (IIJI, 1990, p.1).

As in prosecutorial and police misconduct cases, the extent of the cases adversely affected may never be known. What is known is that a small army of jailhouse informants played the system and the taxpayers of Los Angeles County. Various jailhouse informants, in and out of custody, testified to their own schemes and misconduct. The jailhouse informants central to the grand jury investigation had been charged with a number of crimes ranging from armed robbery, to rape and even murder, and every crime in between. Nearly every informant had an inclination toward recidivism. One informant was convicted of two counts of arson in 1975, convicted in 1979 for attempted rape, rearrested in 1985 and thereafter convicted of multiple counts of rape, kidnap, robbery and other sexual offenses (IIJI, 1990, p. 9-10).

Whatever the individual motive of the jailhouse informant, courts have long recognized "the potential for untrustworthiness which is inherent in such testimony because of the strong inducements to lie or shape testimony in favor of the prosecution". Rarely is a jailhouse informant's willingness to testify based on his moral leanings, repugnance of a particular crime, or the defendant's lack of remorse. Jailhouse informants expect some reward for their testimony, and in some cases they demand it (IIJI, 1990, p. 10).

The benefits can range from extra servings of food to lighter sentences. For example, for past cooperation, an officer arranged for an informant's transfer to a cell with a TV, coffee pot and other amenities not available to other prisoners. Another informant asked for and was granted a request that his incarcerated girlfriend with a million-dollar bail be released on her own recognizance. And yet another informant who testified for the prosecution had his assault charges on a police officer dropped, was allowed to plead guilty to the remaining robbery charges and received a shortened sentence of three years. And still another informant testified that he received several thousand dollars and housing expenses once released from custody; for at least eight months he received free rent valued at $525 a month and $200 a month in other living expenses (IIJI, 1990, p.13-15).

Many informants testify repeatedly for favours. One informant claims that he testified for the prosecution in Los Angeles County ten times. The methods used to manipulate fellow prisoners and professionals alike is both astounding and frightening. Several informants claim that they collaborate with each other to deceive vulnerable prisoners, exploit the system and manipulate law enforcement. During the past ten years, an appalling number of instances of perjury and other falsifications to law enforcement were described by informants (IIJI, 1990, p.21-24).

Informants also described their knowledge and familiarity with the system and people in the district attorney's office. One informant said he would call prosecutors he knew and tell them the case numbers and names of defendants the prosecutor was pursuing. He would then seek leniency by offering information. One informant said he would call the coroner's office, or other city departments, pose as a prosecutor and ask particulars to learn the details necessary for personal leverage. Several testified they obtained copies of police reports, case files and photographs of defendants and victims to use for their advantage (IIJI, 1990, p. 28-30).

Other informants claimed they were approached by police and sheriff's deputies and asked to "cell-up" with certain individuals in order to strike up

trust and conversations that would enhance the government's case against other prisoners. More informants claimed that police asked them how to burglarize a home or how the drug dealing game works; they gave them what they wanted and became part of the official informant network. Others were forced in by constant announcements directed at prisoners over the public address system in the jail in order to make it appear that they were informants. Once labelled by the jail population as a snitch, his safety became an issue, forcing him to seek custodial protection. Some informants claim they were simply placed in the cell of a defendant for a few days without being asked to do anything. Once a record is created that the informant and defendant shared a cell for a period of time, the police would simply provide the informant with critical details of the case to later be used by the informant in court. In one case, an informant offered to testify for the district attorney. The district attorney found the informant's testimony lacking in credibility, so the informant offered to testify for the defence, who also declined (IIJI, 1990, p.18).

In 1984, Federico M. Macias was sentenced to death in Texas. He was vindicated in 1993 when a former cellmate admitted in federal court he had perjured himself. Testifying before a congressional subcommittee after his release, Macias said, "My case shows that the system can work. But it also shows that, when it does work, it is largely because of luck" (Radelet *et al.*, 1992).

ENDNOTES

1 506 U.S. 390 (1993).
2 See *Missouri v. Frye, 132 S.Ct. 1399 (2012)* and *Lafler v. Cooper, 132 S.Ct. 1376 (2012)*.
3 See *Maxwell v. Roe*, 628 F.3d 486 (2010).
4 *Gantt v. Roe*, 389 F.3d 907 (2004).
5 *Maples v. Thomas*, 132 S.Ct. 912 (2012).

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Both prisoners are confined at the California State Prison in Los Angeles County, where they met and began collaborating against draconian sentences such as life without the possibility of parole or what they call the death penalty on the instalment plan – a sentence they both share.

Striking Report: The Creation, Enactment, and Application of the Three Strikes Law and An Appeal for California Voters to Amend It

Forrest Lee Jones *

This striking report,[1] which draws heavily on the research of sociologist and professor Joshua Page (2011) of the University of Minnesota, critically examines the California Three Strikes Law, the events that led to its creation and its enactment, and the repercussions of its passage. The law is designed to incarcerate violent and nonviolent repeat offenders for long periods of time. Political considerations and social retribution are among the motivations that led conservative lawmakers' to pursue this measure targeting repeat offenders.

The Three Strikes Law surfaced "in the 1990's during a period of widespread decline of public support in legal and political authorities. Multiple studies demonstrated increasing scepticism and lack of confidence" in liberal judges, juries, and politicians' ability to lock away repeat offenders (Tyler and Boeckman, 1997). The law was a repudiation of the liberal judicial policies of the 1960's, 1970's, and 1980's by Three Strikes author Mike Reynolds and conservative groups, such as the California Correctional Peace Officers Association (CCPOA) and victim rights groups. The law takes discretionary authority away from these so-called liberal officials and gives it to prosecutors, whose job it is to defend victims, effectively stripping judges of their power by automatically mandating them to give life sentences to repeat offenders. These groups praised reducing judicial power, and increased prosecutorial discretion. Page (2011, p. 184) explains the union's approach:

> For the CCPOA and its allies, Three Strikes was a victory over "liberal" policy makers who, before the 1990's spurned 'tough' approaches to crime and control, and in the words of the union, made incarceration in California 'the Ultimate Welfare Program'. Reflecting on 1994 and the Three Strikes, the CCPOA wrote in 1995, 'many of us would argue that California has finally come to its senses and is prioritizing crime fighting the way it's been ignored throughout most of the 60's and 70's and halfway through the 80's'. The union added, 'true reform is happening presently which is to repeal the liberal policies of the 60's and 70's and get tough with the criminal element'.

Mike Reynolds, an outspoken proponent of Three Strikes, states, "It is the story of one family's heartbreak of behind-the-scenes political manoeuvring by soft-on-crime, liberal politicians in an effect to eviscerate the law, and it's the story of the ultimate victory by a majority of Californians who, in a reversal of decades of citizen neglect, defied the crime 'experts and voted for common sense and justice" (Page, 2011, p. 134).

Reynolds and the CCPOA demonstrate their attitudes toward liberal policy makers and criminals. Instead of supporting rehabilitative policies that integrate convicts back into society, such as self-help, educational and vocational programs that protect public safety, they support punitive measures, like the Three Strikes Law, which hardens criminals, making them a threat to public safety.

Thus, the law was born out of opportunistically appropriating a tragedy. In 1992, a parolee and repeat violent offender murdered young Kimberly Reynolds, the daughter of Mike Reynolds. Reynolds sought revenge for her death, by organizing judges, law enforcement and lawyers to create a law that would "incapacitate" repeat offenders like his daughter's killer (McCarthy, 1994). The group devised a proposal called "The Street Sweeper" because it was as Reynolds put it, "designed to get all criminal garbage off the streets" (Page, 2011, p. 11). Under the law, individuals with a record of one "serious" or "violent" offense who committed any additional felony would receive a sentence twice as long as the current offense. Additionally, the individual would have to serve 80 per cent of his prison sentence before he would be eligible for release. The third-strike enhancement is reserved for those offenders with two prior convictions for "serious" or "violent" crimes and a third conviction for any felony. Third-strikers would receive a life term and would be ineligible for parole until they served 100 per cent of the 25-year sentence. The proposal even stipulated that nonviolent and non-serious offenses would count as a second and third strike (Page, 2011, p. 117).

Critics of the proposal believed the law was too sweeping because the triggering offense did not have to be violent or serious, but throughout the campaign for three strikes, Reynolds and his supporters avidly worked to transform their proposal into law. Reynolds enlisted legislators Bill Jones (R-Fresno) and Jim Costa (D-Fresno) to introduce the bill to the legislature as Assembly Bill 971 (AB971). The bill failed to secure a consensus to pass, and Reynolds needed 400,000 voter-registered signatures in order for the bill to qualify for the ballot, but he lacked the funding to pay for it. Hope

arrived when he received $40,000 from the National Rifle Association, a conservative lobbyist group that supports 'tough-on-crime' measures, like the Three Strikes Law. Nevertheless, the contribution still was not enough to finance a statewide signature gathering campaign (Page, 2011, p. 118).

The following year, on October 1, 1993, a tragedy occurred that changed Reynolds's campaign prospects. 12-year-old Polly Klass was kidnapped from her home and murdered in Petaluma, California, by Richard Allen Davis, a repeat violent offender (a repeat violent offender also killed Reynolds' daughter). Davis had been released from prison for three months when he committed this murder. He recently served eight years of a sixteen-year sentence because he had earned good-time and work-time credits that made him eligible for an early release. Davis's crime created a public outcry on conservative radio shows, which criticized lawmakers for failing to pass AB 971 and asked their audiences to target their anger towards repeat offenders and politicians with no spine who were 'soft-on-crime'.

The national media appeared on the scene, calling Polly Klass "America's Child". Before Polly Klass's death, Reynolds managed to accumulate 20,000 of the 385,000 signatures required to place his initiative on the November 1994 ballot. After law enforcement discovered Polly's body, Reynolds' campaign accumulated an additional 300,000 signatures. Reynolds received extra support from the Klass family. However, once the Klass family, Joe and Mark, discovered Reynolds's bill allowed both nonviolent and non-serious offenses to trigger a life sentence, both men pulled their support, but Mark Klass later re-joined the campaign (Page, 2011, p. 119). In addition to receiving the Klass's support, the National Rifle Association added an additional $60,000 to their earlier contributions of $40,000, and a wealthy Republican Congressman named Michael Huffington, who in 1994 was running against Democratic Senator Dianne Feinstein for her seat, contributed $350,000 to the Reynolds's statement that human garbage is a racial connotation alluding to life's unfortunate people, which on the streets is minorities. Reynolds would eventually situate Huffington as co-chair of his campaign. Apparently, Huffington's move of contributing and endorsing Reynolds's law was a strategy to unseat Senator Feinstein. Then, the president of the CCPOA, Don Novey, and his union contributed $l00,000 to the Three Strikes campaign (Page, 2011, p. 119).

As Zimring *et al.* (2001) discovered, CCPOA members contributed $100,000 to Reynolds's campaign, because they knew there would be a

direct correlation between the enactment of the Three Strikes Law and the expansion of the prison industry, resulting in hiring prison staff, union dues, overtime, and the ability to negotiate contracts beneficial to them. Studies have shown those states with large and influential guard unions, like the CCPOA, have large prison populations. In the CCPOA magazine, *Peacekeeper*, Novey asked his union members to rally behind three strikes and help gather signatures. He argued:

> I suggest to you, my fellow correctional officers, that we deliver a Christmas present to the people of California in the form of an initiative. We now have an opportunity to put societal thugs behind bars to stay, whether for violent or serious crimes. Correctional Peace Officers now have that rare chance to give California citizens a break. Please get behind California's "Three Strikes and You're Out" initiative (Page, 2011, p. 120).

Many California Republicans endorsed AB 971. Of the five bills floating in the legislature regarding repeat offenders, Reynolds's version stood out as the most draconian. Republican Governor Pete Wilson, who was running against Democratic opponent Kathleen Brown for re-election, endorsed Reynolds's bill over the other four bills. Republicans in both houses did the same, with no oppositions from Democrats, because those Republicans knew that 80 per cent of the public supported AB 971 (Page, 2011, p. 120).

Finally, in 1994, the state legislature passed AB 971, relieving Reynolds of having to go the ballot initiative route. Yet, Reynolds went the initiative route anyway to prevent politicians from tampering with the bill unless they got a two-thirds vote in the legislature to amend it. After being asked why he submitted signatures for Proposition 184 after the legislature passed a champion bill, Reynolds responded, "We want this puppy screwed, glued and tattooed" (Page, 2011, p. 120). Thereafter, the people of California (not knowing the proposition included nonviolent and non-serious offenses) voted Proposition 184 into law, on November 7, 1994.

Clearly, based upon the historical context of the information provided herein, politics and revenge had a part to play in three strikes becoming law. At the outset, the special interest groups (i.e., CCPOA, Mike Reynolds, victim rights groups, and conservative politicians) had a vested interest in three strikes becoming law: one, conservatives got retribution over liberal policies and politicians who enacted lenient sentences for repeat offenders;

and two, conservatives and special interests groups used the law to position themselves to fill the prisons, use taxpayers' money to build more facilities, increase their memberships and dues to profit financially, and get elected to a political office.

Thus far, this striking-report has concentrated on the historical background, showing the circumstances that brought together the related social and political groups to create and enact the Three Strikes Law. Again, drawing on Page (2011), as well as others, the next section concentrates on the law's language, showing its relationship to the circumstances in which the law was created. Then the focus shifts to the law's application, which has sent over 80,000 second strikers, and 7,500 third-strikers to state prison (Primer, 2005).

As previously noted within the historical context of the Three Strikes Law, the law is applied to individuals who have been convicted of one serious or violent offense and any additional felony after the initial conviction. Those offenders receive a sentence twice as long as the most recent offense, and are mandated to serve 80 per cent of their sentence before they become eligible for parole. The third strike enhancement is reserved for those offenders with two prior convictions for serious and violent crimes and a third for any felony, regardless of its non-seriousness. Third-strikers receive a life term and are ineligible for parole until they serve 100 per cent of the minimum term of their penalty (Page, 2011, p. 117).

Some nonviolent and non-serious offenses are counted as a second or third strike. For example, for a second serious offense, the length of sentence is double the years normally associated with that second offense. That offender is ineligible for parole until 80 per cent of the double time is served. An individual with a prior first-degree burglary conviction can receive 32 years for his second serious offense (say robbery), but the crime carries a 16-year sentence before the Three Strikes Law is applied. The law can even raise a misdemeanour to a felony. Specifically, an individual with two prior robbery convictions can receive 25 years to life for his third nonviolent or non-serious conviction. That is, a misdemeanour petty theft can be raised to a felony, resulting in a third strike conviction because of the prior theft-related robberies. Furthermore, first and second-strike prior felony conviction enhancements are retroactive to juvenile convictions. To illustrate, third-striker Isaac Ramirez was convicted in 1996 for petty theft with priors for stealing a VCR from a Sears department store. His two priors

were theft from a Lucky store and theft of television from Kmart in 1992. He served six-months for the thefts. Four years later, he was sentenced to life in prison for his third theft (for other aspects of the laws application see Primer, 2005, pp. 1-5).

The application of the law to nonviolent and non-serious offenses is a distortion of the original intent of the law. The original intent was to keep the public safe from repeat serious and violent offenders like the people who murdered Kimberly Reynolds and Polly Klass. Those criminals symbolized the ultimate depravity and lawlessness. Their cases paved the road for advocates in favour of the Three Strikes Law to deceive voters about how the law would be applied and led to the law's passage through the general election ballot.

Since the enactment of the Three Strike law, several challenges have been made over the past 18 years in the state and federal courts arguing against its implementation and constitutionality. In *People v. Superior Court* (1996) a challenge was raised, asking whether a trial court judge should have the discretion to reduce a life sentence under the law by dismissing one or both of a defendant's prior convictions. Following the challenge, on June 6, 1996, the California State Supreme Court ruled that a trial judge could dismiss a prior felony conviction in the furtherance of justice. Another challenge was made to the law the following year. In *People v. Furman* (1997), Furman argued that two prior felony convictions tried in one court proceeding should count as one prior strike. However, the state Supreme Court ruled in 1997 that both priors do not have to be "brought and tried separately" in order to count as separate strikes. In 2003, an argument was made before the United States Supreme Court in *Ewing v. California,* 538 U.S. 11 (2003), that the application of a 25-years to life sentence to a nonviolent or non-serious offense under the California's Three Strikes Law violates the U.S. 8th Amendment ban on cruel and unusual punishment. The U.S. Supreme Court ruled that same year, in a 5-4 decision, that the law's application of a life sentence to a nonviolent or non-serious offense does not violate the 8th Amendment ban. The court agreed with the law's rationale to incarcerate repeat offenders for an extended period of time, and concluded that "policy decisions are for lawmakers to make, and not courts".

Interestingly, the California and United States Supreme Court's majorities on the bench are conservative judges. There are six Republicans and one Democrat on the California State Supreme Court, and five Republicans and

four Democrats on the United States Supreme Court. These are judges as well as career politicians, whose political ideology influences their rulings on three strikes issues.

In addition to the court challenges to the Three Strikes Law, several legislative challenges have also been made between 1995 and 2003. Liberal lawmakers have repeatedly tried to amend the law and bring it back to its original intent by applying the law to serious and violent offenders (Page, 2011, p. 122). Every bill in that period failed due to effective lobbying efforts by the law's defenders: the CCPOA, conservative legislators, Mike Reynolds, and victim rights groups. The CCPOA, along with other groups that opposed three strikes reformation, successfully defeated bills that would have amended the law by financially and politically supporting those legislators who would be opposed to amending the law. Former Democratic assemblywomen Jackie Goldberg, who during her term unsuccessfully introduced three bills in the legislature, witnessed these tactics used by the law's defenders:

> The people who want to keep [three strikes] are extremely well organized and make major contributions to elected officials. So what has happened is you have an enormous amount of [political] intimidation. People who are in assembly races know that they're term limited [to two-terms], know that they may want to run in a Senate Race a few years from now, and know that certain groups like police and prison guard unions, district attorneys, and crime victims organizations will pay for [or against] campaigning (Page, 2011, p. 122).

Goldberg and other politicians who favoured amending the law realized the political clout these stakeholders wielded in the legislature. Even if an amendment garnered the two-thirds vote required, the law would still need the governor's signature. Every governor since the three strikes enactment until the present day supports the law in its existing state.

Efforts to amend the law continue and still face severe opposition in the legislature. Assembly Bill 327 (AB 327) was introduced in the California Legislature on January 30, 2012 and it requires that the third strike be a violent or serious offense to trigger a life sentence. AB 327, sponsored by Mike Davis, was defeated by Republican legislatures, but Davis resubmitted the measure the following day for the 2014 general election ballot. By a

vote of 41-33, the bill passed in the state assembly on Wednesday, January 31, 2012. The bill now heads to the senate floor for a second vote before going to the governor for his approval to have it placed on the ballot for November 2014.

The law's supporters defeated a 2004 Ballot Initiative to amend the law. Proposition 66 (Prop 66) proposed that the third strike be a violent or serious offense, and redefined certain felonies as non-strikes. Jim Benson and Sam Clauder, two men who originally supported three strikes, spearheaded Proposition 66. Benson and Clauder worked with the 2000 Proposition 36 campaign. This proposition was a successful drug diversion that sent nonviolent drug addicts to treatment, instead of state prison. Even offenders who would have faced a third-strike for drug possession, could escape a life sentence and be diverted to a drug treatment facility.

For Prop 66, Benson and Clauder sought the help of Joe Klass, father of Polly Klass, to assist them in raising funds. They launched a letter and e-mail campaign to raise money using the endorsements of Joe Klass, and actor Ed Asner. They surprisingly received $300,000 from an insurance tycoon, Jerry Keenan of Sacramento, California, whose son was sentenced under the law as a second-striker for two counts of vehicular manslaughter and one count of "causing great bodily injury". Two passengers were severely injured as a result of his son's drunk driving (Page, 2011, pp. 123-124).

Opposition to Prop 66 (e.g. CCPOA, Mike Reynolds, JHV, and other political and law enforcement officials) opposed changing the definition of certain violent or serious crimes, which allowed those who were sentenced under the law for those offenses to be resentenced to a non-life term. They used Keenan's son's crime of "causing great bodily injury" as a strategic argument to the public that Keenan's motive for changing the law was to get his son out of prison (Page, 2011, p. 124). The CCPOA organized an elite coalition of law enforcement groups to defeat Prop 66. A month before the general election, the CCPOA spent $245,650 on the "No on 66" campaign. After the CCPOA and other donors successfully raised a considerable amount of funds, they released this false statement to the public through spokesperson and president of the California Police Chiefs Association, Cam Sanchez. Sanchez argued:

> Every day between now and the election, we'll be releasing at least one mug shot and rap sheet of a felon who will be released early by Proposition 66… These are very dangerous people-serial child molesters,

> rapists, murders, [sic]and career criminals with long histories of serious crime… They and thousands more like them will be back on the streets if Proposition 66 becomes law (Page, 2011, p.126).

Despite the misleading campaign propaganda, polls showed an overwhelming 65 per cent of the public expressing approval for the proposition. The proposition's language was twisted and grossly misrepresented the category of people the bill would give relief to. The opposition's deceptive scare tactics informed the public that "child molesters, rapists, and murderers" would be released. Individuals who were convicted of a nonviolent or non-serious third strike but had a prior conviction for "child molestation, rape, or murder" qualified to be resentenced (Page, 2011, pp. 130-131).

With victory looking likely for proponents of Proposition 66, the opposition received a large contribution from Orange County billionaire, Henry T. Nicholas III, chief executive officer of Broadcam Corporation. He gave $1.9 million to the "No on 66" campaign, and $1.6 million subsequently for a total of $3.5 million. Many speculated that his contribution was motivated by the 1983 murder of his sister. Nicholas's mother, Marcella Nicholas Leach, co-founded the group Justice for Homicide Victims (JHV) as a result of her daughter's murder and ultimately became co-chair of JHV. After receiving the U.S. Department of Justice's National Crime Victims' Right Week Award in 2005, the media portrayed Mr. Nicholas as a saviour on the behalf of victims, instead of a wealthy businessman associated with JHV and CCPOA.

The "No on 66" campaign received support from former governors Pete Wilson and Arnold Schwarzenegger after Nicholas gave a large cash contribution. Governor Schwarzenegger played the leading role to defeat Prop 66 by using his popularity and making commercials. Schwarzenegger spoke into the camera saying, "Under Proposition 66, 26,000 dangerous criminals will be released from prison. Child molesters, rapists, and murderers. Keep them off the streets and out of your neighborhood. Vote no on 66. Keep them behind bars" (Page, 2011, pp. 126-128). A background picture showed twenty mug shots of rugged-looking prisoners as he spoke against the proposition.

Some politicians who were originally against the Three Strikes Law currently support it. One prominent example is Governor Jerry Brown, who campaigned against Prop 66 at the behest of his former foe, the CCPOA.

To thank Brown for his help, the CCPOA financially supported his 2010 governor's race. Currently, Brown continues to maintain strong ties with the CCPOA (Page, 2011, pp. 128-129).

Through the use of deceptive tactics and bestial description of prisoners who qualified for sentencing relief, along with the line-up of authoritarian figures who opposed the proposition, the opposition succeeded in defeating Prop 66 by 47.3 to 57.7 per cent (Page, 2011, pp. 130- 131). The actions taken by the law's supporters demonstrate the desperate measures they took to preserve the Three Strikes Law, including violating the law by misleading the public to further their agenda.

The next and fourth section of this striking-report focuses on the law's impact on society. First, the focus aims at whether or not the law has deterred criminal behaviour. Second, the focus shifts to the argument of critics who point out the law's discriminatory application, and third, the costs to taxpayers. As will be shown, the law has had an adverse effect in all of these areas. The law exists as a costly, ineffective and an unusually discriminatory piece of legislation.

Established through the historical background of this striking-report, Mike Reynolds, the primary architect of the Three Strikes Law, named the law The Street Sweeper because he believed the law "would sweep all the human garbage off the street" (Page, 2011, pg. 11). Evidently, he believed the law would significantly reduce crime. However, studies done by the Legislative Analyst Office (LOA) and other economists find insignificant deterrent effects of the Three Strikes Law over the past decade. While crime statistics declined during the period following the passage of the law, this decline was part of a national decline caused by many factors. In fact, studies done by LAO analysts found crime rates declining by 10 per cent ten years prior to the law's enactment, and continuing to decline by 43 per cent between 1994 and 1999. In 1999, crime rose by 11 per cent. The violent crime rate fell 8 per cent during that same period, and continued to decline, for an overall reduction of 43 per cent between 1994 and 2003 (Primer, 2005, p.12). These statistics were used misleadingly by Three Strikes proponents to claim the law had a deterrent effect, but actually these statistics were part of a national trend of declining crime rates during that time. National crime rates reported by the Federal Bureau of Investigation's Uniform Crime Report acknowledged that crime dropped 31 per cent between 1991 and 2003, with violent crime down 37 per cent over that time

(Primer, 2005, p. 12). Scientists also found other factors outside the law, which contributed to a reduction in crime, such as a strong economy, more effective law enforcement practices, demographic changes, and a decline in handgun use (Primer, 2005, p. 12).

Throughout California, county-by-county studies have shown drops in crime rates in counties that aggressively and leniently enforce the law. The largest crime reduction was reported at 45 per cent, and the lowest at 44 per cent, showing only a 1 per cent discrepancy to be based on whether or not the law was enforced. Kern, Los Angeles, San Diego, and Riverside counties had the highest three strikes conviction rate but saw a drop in crime rates between 1994 and 2003 by 37 per cent, whereas Ventura, Contra Costa, Alameda, and San Francisco counties had lower conviction rate of 33 per cent but still saw a drop in crime over the same period (Primer, 2005, p. 13). The county-by-county study and national trend assessment demonstrated that other probable factors outside the Three Strikes Law being enforced that was responsible for a decline in crime for California.

As mentioned earlier, Mike Reynolds stated that the Three Strikes Law is designed to "sweep all the human garbage of off the streets". He alluded to his belief that the law would effectively reduce crime. Reynolds's language included two derogatory connotations, implying that marginalized people, who are predominately minorities, are "human garbage". These are the people Reynolds alluded to when making the statement about "human garbage". In fact, during the campaign for the Three Strike law in 1994, the *Los Angeles Times* reported proponents of the law using "highly negative images of offenders, [and making] derogatory public comments about repeat felons as subhuman "three-time losers", "human debris", [who are] animals best kept in cages" (Dzur, 2010, p. 359).

A December 2004 Legislative Analyst Office Report, shows that African Americans account for the largest second- and third-striker populations under the Three Strikes Law. African Americans make up 45 per cent of the third-striker population, followed by Hispanics at 33 per cent, and whites at 26 per cent (Primer, 2010, p. 10). In another study conducted by the *Los Angeles Sentinel*, writer Kevin Herrera shows, "how the law exacerbated the racial disparities in the prison population, with African Americans making up 31% of the prison population and only 7.5% of the state population" (Herrera, 2001). Additionally, Stephen Vagmen, Los Angeles civil rights attorney, said that Three Strikes is another form of racial profiling. He explained:

> "Society does not wish to deal with a black and Latino underclass that it has created through its economic system. Racial profiling is basically the first step of the Three Strikes Law. It's designed to take people of color off the streets and keep them out of white neighborhoods. And the Three Strikes Law is designed to keep people of color out of society, and put them in prison" (Parker, 1999).

Some people agree with Vagmen's position. They could argue that the law's application is not blind to race. The law is not about equality in sentencing but about removing African Americans from the streets. This displacement disenfranchises them and exacerbates societal problems within their family structure, which denies them opportunities because of their felony status. They are unable to vote. They have little or no economic and education input. They have little or no entrepreneurial activity. Very few of these pariahs own real estate. And, targeting the black underclass through the law separates families, which creates one-parent households.

Any law with this bias in application would be a problem, but it is a nightmare when it also hamstrings California's economy. In 1994, economists believed the Three Strikes Law would be costly to taxpayers, creating prison operation costs in the billions of dollars by the year 2003, and up to billions of dollars yearly by 2006 (Primer, 2005, p. 10). According to the California Legislative Analyst Office, prison construction is anticipated to cost a staggering $20 billion by 2026. Although these predictions are exaggerated, the law nevertheless has had, and will continue to have, a significant impact on state spending. California taxpayers spend $49,000 to incarcerate each prisoner yearly, with over 40,000 people imprisoned under the Three Strikes Law, according to the LAO, which adds up to nearly $2 billion a year in costs for the state of California (Primer, 2005, p. 10).

Costly litigation against the state has also increased. Second- and third-strikers take civil action against the state by challenging the length of their sentences and the living conditions they face due to prison overcrowding. All legal proceedings are paid for with taxpayers' dollars. As this striking-report highlighted earlier, two- and three-strikers must serve the majority of their term before they are eligible for parole. Prisoners spent an average of 2l months in prison prior to the Three Strikes Law, but by 2004 this average increased to 25 months. This increase is due partly to second strikers who were paroled in 2004, serving 43 months in prison and costing the state

$60,000 per second striker. Furthermore, third-strikers are also serving longer sentences than they would have prior to the law's enactment. This fact is true for nonviolent and non-serious offenders. Third-strikers must appear before the Board of Parole Hearings to be released because of their life sentence. As of 2012, no lifer has appeared before the board and the earliest any third-striker will be eligible to appear before the board will be 2019. Consequently, the length of time to be served in these two- and three-strike sentences creates an aging prisoner population, which increases the cost of health care and transportation costs to medical facilities for ill prisoners (Primer, 2005, p. 10). Nonviolent third-strikers are expected to cost the state almost $200 million a year for the next 25 years, according to the state auditor (Kaplan, 2012).

With such high costs for prison stays, the State of California could save millions of dollars annually by reforming the Three Strikes Law. The opportunity for three strikes reformation might present itself again with the potential ballot measure coming in November 2012. If voters approve the initiative, backers believe that about 3,000 of the 4,000 incarcerated nonviolent third-strikers serving time in state prisons could be eligible for resentencing. Reforming the law could save the state $150 million to $200 million a year (Lagos, 2012).

In summation, the law has had a significant effect on California's prison system. A third of California's prison population is serving enhanced sentences under the Three Strikes Law. Statistics from the LOA has been used to conclude that there is no evidence to establish that the law has contributed to California's decreasing crime rate; nonetheless, the law continues to increase prison spending and the state's budget deficit. The state should abolish the practice of giving life sentences to people who commit minor crimes, especially at a time when California's citizens feel the buckling effects of a recession that creates school closures, increases tuition fees, loss of jobs and other social services that are vital to personal and social prosperity.

Additionally, because of the prison overcrowding, the state faces a federal court order to reduce its prison population. Certainly, the Three Strikes Law is a public policy issue that can be resolved by California's elected officials, but cannot be easily addressed because of the politics described in this striking-report. California's elected officials improperly represent their constituents by enacting laws that give life sentences to petty offenders and

therefore exacerbate current economic problems. Washington and other states have amended their Three Strikes Laws.[2] California could model its law after Washington's law. As the state faces a budget shortfall that continually devastates education, health care, and human services programs, unnecessary spending on incarceration is nothing less than fiscal mismanagement.

Therefore, this striking-report is an appeal to California voters to cast their ballots during the 2012 ballot initiative process in favour of reforming the Three Strikes Law. Voters can reinstate the budget constraints that contributed to Washington amending its Three Strikes Law, as well as the "spirit of the law", by voting for it to be amended and only applied to serious and violent offenses. Reform will also end a very expensive battle between proponents and opponents of the law. Ultimately, instead of spending millions of dollars to warehouse nonviolent or non-serious offenders, for decades, under the Three Strikes Law in its current form, reformative policy has the potential to usher California to a revitalized economy that spends more tax-dollars on education, health care, and public safety.[3]

ENDNOTES

* Note from the issue editors: In November 2012, California voters passed Proposition 36, which affected some 4,000 prisoners who were serving 25-to-life sentences for nonviolent offences. With the passage of this law, life sentences will be imposed only if the third strike was for a felony offence. As a result, nonviolent prisoners are now able to petition for relief in the form of new sentences and release.

1 Striking-report refers to the Three Strikes Law, and how California continues the practice of striking out offenders with a history of nonviolent offenses. The title's reference also points to the report's striking information about the Strikes law that many voters and potential voters are more than likely unaware of.

2 Washington only applies its Three Strikes Law to offenders who commit serious offenses.

3 Public safety can be achieved by amending the Three Strikes Law and focusing on individuals who commit violent offenses.

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Debunking Double Bunking in the Correctional Service of Canada: A Critical Qualitative Account

Jarrod 0. Shook

> …in the context of anticipated increases in the offender population and the consequent rise in double bunking, CSC will be challenged to meet its targets with regards to the reduction of assaults and violent incidents in institutions. Everything possible will be done to provide appropriate living conditions that support rehabilitation and safe accommodation; however, double bunking is associated with adverse events. Therefore, until the additional accommodation capacity is ready, the organizations results may fall somewhat short of its targets.
>
> – Office of the Correctional Investigator of Canada (OCI), 2011-2012 Annual Report, page 27.

The above written declaration of the Correctional Service of Canada (CSC), as cited in the *Annual Report of the Office of the Correctional Investigator for 2011-2012* speaks to the pervasive issue of a burgeoning federal prison population and its consequent repercussions for the correctional environment – namely, an increase in the practice of double bunking. This practice, involving the placement of two prisoners in a cell originally designed for one, has impacts on the health and safety of prisoners and CSC staff alike.

CSC is admitting that despite its goals for reducing already prevalent violence in its fifty-seven institutions, under the pressure of current legislative reforms and the inherent challenges, that the organization "may fall somewhat short of its targets". This admission, although admirable for its candid forecast, is disturbing.

As an interested stakeholder – or more crudely put, as a prisoner – in this organization's success in meeting its targets for maintaining a safe environment, this anticipated failure falls not only "somewhat short", but entirely short of any reasonable expectation for safe, secure, and humane accommodation while incarcerated. To be sure, my uneasiness, being more than a sentiment, is shared by many affected by this practice. In fact, over the last year, the Canadian penitentiary system has received extensive criticism from academics, politicians, frontline workers, and other professionals of the criminal justice nexus. Repeatedly, these authorities have expressed

their concern about the recent penal shift to the political "right wing" under the Harper government and its 'tough-on-crime' agenda – one that is an antithesis to evidence-based policy – including legislative reforms such as the *Truth in Sentencing Act* (2009), the *Tackling Violent Crime Act* (2008), and Bill C-10, otherwise known as the *Safe Streets and Communities Act* (2012). Throughout the debate, the issue of double bunking has remained a steadfast talking point, as these policies are placing more of the criminalized behind bars for increasingly lengthy sentences under harsher conditions.

Among the cast of the enlightened professionals and experts voicing concerns were Howard Sapers, the Correctional Investigator of Canada, who said, "Putting two inmates in a single cell means an inevitable loss of privacy and dignity, and increases the potential for tension and violence. It is a practice that is contrary to staff and inmate safety" (OCI, 2012, p. 27). Jason Godin, President of the Ontario Region's Union of Canadian Correctional Officers (UCCO), agrees: "It creates a very unsafe environment for workers... you have tension between two inmates who are double bunked... at the same time your access to services is going to be diminished" (Paperny, 2012a).

Catherine Latimer, Executive Director of the John Howard Society, observed, "The justice system and corrections system is already under strain in this country... corrections workers and even some provincial governments are telling us there is no more room for prisoners... the Corrections and Conditional Release Act is rife with standards that can't be maintained as the numbers go up" (Brosnahan, 2012).

Kim Pate, Executive Director of the Elizabeth Fry Society, added, "Putting people in multiple person cell accommodation actually creates unnecessary stress...it's long been regarded as creating more harsh conditions than, certainly, the judge who sentenced the person ever intended" (Paperny, 2012b).

Sociologist Justin Piché advanced a cogent alternative: "We should encourage [Minister of Public Safety] Toews to seek treatment for his addiction to incarceration and put a stop to the Conservative party's 'tough on crime' agenda that is deepening the capacity crisis in our prisons" (Tibbetts, 2010).

Assuming that the above noted parties represent something of an authoritative voice on corrections, there seems to be a consensus that double bunking is a bad policy and also fails to adhere to the standards and norms set by the United Nations:

> Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison to make an exception to this rule, it is not desirable to have two prisoners in a cell or room (UCCO, 2011, p.2).

The policy also runs contrary to the CSC prisoner accommodation policy objective, which calls for the provision of reasonable, safe, secure and humane accommodation (CSC, 2012). It is also noteworthy to mention that until February 5, 2013, the CSC recognized in principle that "single occupancy accommodation is the most desirable and correctionally [sic] appropriate method of housing offenders" (CSC, 2013). This principle belief has, however, quite recently been conveniently struck from their prisoner accommodation policy. This is not surprising for, if one were to interpret the former principle in the context of what is currently being practiced and expected to increase with rising offender counts, it would seem CSC would be placing offenders, albeit with some hesitation, not only in the least desirable, but also the most correctionally inappropriate method of housing them. Yet this, according to the Minister of Public Safety, Vic Toews, is "no big deal" (Tibbetts, 2010) and will continue despite the commitment to add an additional 2,700[1] new cells to existing prison facilities which are not meant to alleviate the pressure caused by double bunking, because in the words of Toews, "Double bunking is appropriate" (Paperny, 2012b).

Having raised the issue of double bunking and fit it within the context of a controversial political agenda, met with substantial criticism from an authoritative body of frontline workers, professionals, and experts, I add my voice as a prisoner alongside this group of critics to contribute a unique perspective on the issue. This perspective deserves the title of unique for a couple of reasons. The first, as already mentioned, is that I am currently incarcerated and housed in a double bunk cell in a Canadian penitentiary, thus enabling an adversely privileged, first-hand account of that experience. Secondly, as will be demonstrated with greater precision later in this paper, this perspective has been informed with qualitative data which captured a sample of the prison population's description of the experience of sharing a cell with another prisoner in both medium- and maximum-security settings. This research was carried out with consideration of how some experts have noted that qualitative based accounts of the prison experience

have provided rich and compelling descriptions of how prisoners cope and served to reinforce their research interests, which is an intended goal of this undertaking (Zamble and Porporino, 1988, p. 6). Interested parties that would qualify as my audience include CSC, the Minister of Public Safety, the OCI, parliamentarians, academics, the public and other interested stakeholders.

In what follows then, I intend to provide a descriptive criticism of the current era in federal corrections as it relates to the cynical outlook announced by CSC in the wake of a swelling population. It is my intent to augment this description with an up-close and personal, qualitative account of how prisoners actually experience the repercussions of such pressures, particularly the experience of having to share a cell with another prisoner.

Before embarking on this task, it is necessary to make a few more prefatory remarks. First, to hedge a bit, the point must be made that I work and write in a deprived environment. As others have found, prisoners are relatively information- and resource-deprived, with very limited access to quality reference and educational material and no access to the Internet (OCI, 2012, p. 38). It is not my intent here to excuse ignorance, but it would be appreciated if I were to be forgiven if at times this perspective appears misinformed. Second, being incarcerated carries with it the implication of having broken the law. Inherent in such a role, is the individual's onus to take responsibility for their actions. Resultantly, any criticisms levied towards CSC are made with some hesitation. This reluctance exists as it is difficult at times to separate the reality of one's position in such a situation from a critique of it. Hence, it must be qualified that although the attention here is directed outward, there are fingers pointing back that have not been overlooked and it is hoped that although having demonstrated bad character in the past, that any future right to having any good ideas has not been forfeited. *Non sum quails eram*.[2]

I

The research carried out for this paper was conducted in both the maximum-security environment of the former reception site for federal prisoners at Milhaven Institution (MI), as well as the medium-security environment of Collins Bay Institution (CBI). As noted, with the particular difficulties of research in prisons, design considerations can become even more complicated

than they usually are (Zamble and Porporino, 1988, p.17). If this is true for academics commissioned to carry out research in such settings with many resources at their disposal and the support of their respective departments and institutions, then it is especially true for a prisoner seeking to carry out unofficial research in a resource-deprived environment, with only public interest and necessity as major allies. Nonetheless, I sought to overcome these obstacles and balance out the needs of the research project (i.e. gathering qualitative data on the experience of double bunking) with the amount of resources available. It is perhaps worth recognizing that as a participant observer in the study setting, I was in the unenviable position of having full access to the prison population without the hindrance of bureaucracy or other limiting security protocols that are typical with research in prisons. Nevertheless, this freedom demanded that ethical considerations remain paramount and every step of the design process and the study itself was executed with the unyielding standard that no harm was to come to any of the participants.

All respondents in the study were voluntary participants who were informed of the nature of the research and verbally granted their informed consent to participate. It was a goal of this project that 10 prisoners who were double bunked in each setting be approached for agreement to participate in a study that sought to gather data on their experience of sharing a cell with another prisoner in order to report their responses in a research paper. Although it would have been preferable that the individuals selected to participate in the research project be random, this was a difficult standard to achieve. Thus, as a participant observer in the population being selected for the study, insider information was available that made it possible to approach only those people who were double bunked, which was nearly 100 per cent of the population in the maximum-security setting and 20 per cent in the medium-security setting. This method of sampling, "reliance on available subjects", is identified in the academy as being an inadequate sampling method (Babbie, 1995, p. 26). However, this non-probability sampling method was unavoidable, as it would have been impossible, given the circumstances, to use other options. It is noteworthy to mention, however, that although the prison population on the whole is heterogeneous in age, ethnicity and individual backgrounds, the homogeneity of the population relevant to the substantive interests of the study from which the sample was drawn (i.e. all male prisoners in a double-bunk cell accommodation) enhanced the representative value of the sample.

The reliability of the method was also a priority. Therefore other imperative considerations that were given to this relatively standard research practice included making sure that the open-ended survey question was clear enough to the respondents to yield clear answers. As previously noted, the meaning of one's response to a question has much to do with the wording (Babbie, 1995). The term "double bunking" tends to carry a negative connotation as far as terminology is concerned; therefore to resolve this, the question was posed as follows in order to ensure reliability and to avoid encouraging the respondent to answer in a particular way: "Please describe your experience of sharing a cell with another inmate (double bunking)". Balancing out the question with the inclusion of "sharing a cell with another inmate" seemed pertinent to negotiate the subtle differences in response that might be expected.

The open-ended question was self-administered, which was appropriate to the setting and the goals of the project. This methodology ensured that the individual respondent would be given time to give consideration to the question and at the same time have a degree of control over the conditions under which they would answer the question, (i.e. in their cell). One limitation considered in relation to this method was the fact that the individuals would be responsible for responding to the question and returning their responses the following day. This meant they could potentially forget about it or procrastinate. Ultimately, the response rate was 80 per cent.

The first consideration given before approaching a prisoner to request his participation, which ultimately turned out to be ethical, as well as an indicator of reliability, was whether or not the respondent was competent enough to answer the question posed in the survey. This is especially relevant to a prison population, where literacy levels tend to be much lower than in the general population. With this in mind, it was with a certain degree of caution that individuals were approached. For instance, in one case an individual was approached who initially seemed quite interested in the project. However, once he found out that the research design called for the response to be self-administered, he abruptly declined to participate. A short while later the same individual approached me to apologize for his refusal to participate, stating that he did not have the ability to read or write. This was a sobering moment for me, and from then on, it was recognized that simply requesting participation in the project carried with it the latent consequence of causing a potential respondent to face aspects of himself that he might not normally be inclined to consider.

This was also an ethical consideration that was given when bearing in mind the fact that the very act of requesting a prisoner to describe their experience of sharing a cell with another prisoner could lead them to become more conscious of that experience and cause them further distress in an already distressful environment. Ultimately, when balanced against the ends of the project it was determined that this was also an unavoidable possibility.

II

As identified, the research carried out for the purposes of this paper was conducted in both the maximum-security environment of the former reception site for federal prisoners at Milhaven Institution, along with the medium-security environment of Collins Bay Institution. Before reporting the data, I will provide descriptions of these two settings in order to contextualize the findings presented thereafter.

Milhaven Assessment Unit

Milhaven Assessment Unit (MAU) was the former reception site for all federal prisoners in CSC's Ontario Region sentenced to two years or more. In the wake of a planned prison closure for Kingston Penitentiary (KP), the Assessment Unit has been relocated to Joyceville Institution, as the Milhaven site and its cell space is refitted to accommodate the flow of maximum-security prisoners due to arrive with that closure. Although part of this study took place while MAU was still operational, as of December 2012, no new prisoners were to be received at Milhaven for reception.

Reception into federal custody is carried out through a process that ensures CSC authorities may review the cases of all new admissions to determine their individual needs and make decisions on which penitentiary to place them. The stated purposes of this process are to ensure that all prisoners entering the federal correctional system a) undergo a full assessment of their program and security needs, b) are provided with counselling to help them adapt to the penitentiary environment, c) are informed of such matters as program opportunities, rules, and regulations about conduct and the prisoner grievance process, as well as d) that they have a correctional plan designed to address their individual needs.[3]

All male offenders go through the above noted operations (as targets of information) before moving to their penitentiary placement, informally

referred to as a "Mother Institution".[4] Federal institutions fall into three categorized security levels: maximum, medium and minimum. The Milhaven Assessment Unit, being housed within the notorious Milhaven maximum-security institution, thus operated under a maximum-security regime. Under this regime, in addition to extracting information on the life histories of their residents, CSC promised to a) make sure that all prisoners are clothed and fed, b) that they are provided with proper bedding, c) that they are given toilet articles to stay clean, and d) that they are given the opportunity for at least one hour of exercise per day. To accomplish this task within the parameters of a maximum-security environment, a particular operational routine had been devised. Consequent to the maximum security dictate, the MAU routine required that all prisoners remain locked inside their cells for 23 out of 24 hours a day, aside from 25 minutes that were allotted for a shower and telephone call every other day. To be fair, as part of the assessment process, prisoners would at various times be required to leave their cells for appointments with parole officers and other decision makers. Additionally, there were institutional work assignments that were offered to MAU prisoners. However, these positions were scarce and only offered to a select group who met the security criteria. Thus, it is fair to say that a majority of prisoners were expected to spend a majority of their time inside their cells. As intolerable as this may sound, the cell accommodation at MAU was for double bunking, which has been identified as most pervasive in the CSC assessment units with occupancy rates exceeding 160 per cent in some penitentiaries (OCI*,* 2012, p. 24).

The cells at MAU were five square metre wet cells, equipped with both a toilet and a basin. Although it did not appear that the cells were designed for the purposes of holding two prisoners, there were two bunks. It would seem that this was not intended as a permanent accommodation as in many of the cells the top bunk had been retrofitted with a chain and contained no accessory to accommodate the climb to the top. Each cell was equipped with a barred window that allowed some natural light to flow into the tiny space and could be opened and closed at the leisure of the occupants. In addition to the natural light, each cell was also equipped with a 32W fluorescent light. There were two electrical outlets for the use of prisoners who possessed electronics, such as a television set. At one point, MAU issued "range" televisions, which were to be loaned to arriving prisoners for use in their cells the duration of their stay (anywhere from 36 months on average). Television, although a luxury by some standards, would allow prisoners to

watch cable television and were paid for out of a prisoner-funded account. At the time of my arrival at MAU, the remaining television sets had been routinely retracted. However, any prisoner who had the means, could send in their own from the community. Although I was unable to identify exactly how many cells did or did not have a television, I observed many without one. This obviously created some additional tension and discomfort for those who were unlucky enough to be housed together without the means of obtaining one. As this picture illustrates, the conditions of confinement were relatively harsh and exacerbated by the fact that two prisoners had to share such a small and deprived space with one another.

Collins Bay Institution

Collins Bay is one of five medium-security institutions in the Ontario Region. Optically from the exterior, Collins Bay holds a shadowy image, with its large walls and archaic structure, including castle-like guarded gun towers. This image, although representative of the spirit of the institution, in no way compares with the more modern, technologically advanced, and aesthetically pleasing interior. This medium-security institution is divided between an onsite medical health centre, cafeteria-style mess hall, programs building, recreation centre and outdoor track, as well as five security units for cell accommodation labelled 4, 6, 7, 8, and 9 block respectively. In likeness to MAU as far as prisons go, but in its own manner of containment, Collins Bay Institution also administers its own particular security dictate. Although in a technical sense "a medium is a medium is a medium", Collins Bay would be a de facto high-medium, compared with the other, more liberal security dictates of medium-security institutions found throughout Ontario like Fenbrook Institution or Bath Institution.

In effect, Collins Bay could also be considered a quasi multi-level complex. If this is true now with the division of security that exists within the prison itself between 4 block (high), 6,7, and 8 block (medium), and 9 block (low), it will be especially true once the maximum-security unit currently being constructed is complete and operational.

As with other institutions, particularly medium security, under the pressure of current legislative reforms, Collins Bay has resorted to the practice of double bunking in an effort to manage these pressures and currently operates at the 20 per cent double bunking maximum of 86 cells as per its population. These double bunks are uniformly spread throughout the institution in each block.

Of the five security units, 4 block is considered to be from the "old school", and this is true both literally and figuratively. The 4 block security unit is what remains of the original architecture for cell accommodation at Collins Bay. Generally, placement at 4 block is seen to reflect one's position as a greater threat to the safety and security of the institution, and is also seen as less desirable for cell accommodation. Nonetheless, as with other security units of the prison, cell accommodation at 4 block has also been revised to include double bunking.

The cells in 4 block are below the regulation standard for dual occupancy, as outlined in Commissioner's Directive 550 for prisoner accommodation, and, as with the cells at Milhaven, are "wet" cells containing a sink and toilet. Additionally, these cells contain a window that allows some natural light to flow into the cell, which can also be opened and closed at the leisure of the occupants.

As a unit, 4 block contains showers and telephones, as well as laundry facilities. Operation is on the same schedule as the rest of the facility and the unit opens up into the mess hall three times daily for meals, at 7:30am, 12:00pm, and 5:00pm. As in other units, if a prisoner does not attend work, school, or any other program being offered during the day, he is expected to remain locked in his cell, aside from a short break in the morning and afternoon, during which cells open up to facilitate the return of prisoners coming back from their work assignments. Nonetheless, during daytime hours many prisoners, especially those who are double bunked (particularly newcomers), must remain locked in their cells.[5]

The new units 6, 7, and 8, which were built on the principle of direct observation, contain 8 ranges with 12 cells on each range, which on the top tier of each building contain 5 double bunks, for a total of 20 double bunks per unit. As mentioned, this meets the exact cut-off that has been adopted as a formula for the capacity of double bunking, which is 20 per cent in each region. Therefore, at 86 double-bunk cells, Collins Bay is at the threshold but in compliance.

Unlike the cells in 4 block, the new units of 6, 7, and 8 block are much larger, at the regulation standard of seven square metres. These newer cells are also wet cells containing a window with natural light, as well as numerous electrical outlets for electronics and shelf space for personal belongings. Unlike Milhaven, CBI prisoners are considered penitentiary placed and are therefore entitled to have up to $1,500 in cell effects, which must be sent in at their own cost within the first 30 days of their arrival

and are for use the duration of their sentences, provided these items meet the security criteria. Cell effects that are allowed include television sets, clothing and gym equipment.

Also unlike MAU, the security schedule is more liberal, and although prisoners who do not attend work, school, or other programs during the day are locked up except for meals, from 6:00pm to 10:30pm each night and during day hours on the weekends, all cells open up for general association in the recreation yard.

Recreation, which operates on an hourly change-over to and from the yard, includes clubs rooms, a billiards room, an outdoor track and weight pit, as well as an indoor basketball court and gym. Certainly the CBI environment, particularly after 6:00pm, offers much more freedom than MAU.

In keeping with the multi-level philosophy, CBI also includes a "special" unit called 9 block. In 9 block the ranges are more or less self-contained living units with full kitchens and showers. In this block, as a privilege for good behaviour and the appropriate custodial scores, a prisoner is entitled to prepare his own food on a budget he must keep for himself of $4.75 per day.

Thus, in comparison with MAU, CBI is in a class of its own in relation to the conditions of confinement. This is an important distinction that must be made when bearing in mind the responses that were given as prisoners described their experience of sharing a cell with another person. Nonetheless, as will be demonstrated, the differences of attitude towards the experience are often quite similar.

III

This study was born out of a union between experience and education on the practice of double bunking. Thus, it was not with neutrality that the research was initiated, but rather out of the necessity to draw attention to the fact that it was a damaging experience. As such, it was expected that the responses gathered in the study would reflect this assertion, though to what degree it was difficult to accurately surmise without systematically consulting those who must negotiate that experience. Furthermore, the study here was never intended to be an exhaustive exploration, but rather to stimulate further research into the issue by more powerful actors on the stage of national policy.

It was expected that the data gathered would lend confirmation to some previously published critical analyses of the situation. This was established,

and in the pool of public voices weighing in on the issue, the Correctional Investigator, Howard Sapers, seems to have been one of the most coherent, when the data gathered here is weighed against comments promulgated by him in his most recent report to parliament in the *Annual Report of the Office of the Correctional Investigator 2011-2012*:

> Prison crowding has negative impacts on the system's ability 10 provide humane, safe, and secure custody. Putting Iwo inmates in a single cell means an inevitable loss of privacy and dignity, and increases the potential for tension and violence. It is a practice that is contrary to staff and inmate safely. Crowding is linked to higher incidents of violence, prison volatility and unrest, as well as the spread of infectious diseases (p. 25).

By unpacking the Correctional Investigator's statement, and synthesising the data gathered in this study, we can begin to construct a poignant, coherent description of double bunking as seen through the eyes of those who must endure it. As observed, double bunking impacts the system's ability to provide, humane, safe and secure custody. This is an erosion of the policy objective of the Commissioners Directive for cell accommodation and defies the fundamental mission of the Correctional Service of Canada (Mission and Core Values). To verify, one respondent in the study succinctly offered his orientation towards double bunking, "It's unhunane [*sic*] some people can't handle it straight up" (MAU).[6] While another, perhaps a little more versed on international standards stated, "Other than factually being inhumane and against the Geneva Convention, it does very little to help in the rehabilitation process" (MAU). While still another identified how quite literally the experience of sharing a cell with another person has actually served to quash his humanity:

> After I started noticing a pattern with the cellmates I have not gotten along with I found that if I became completely neutral with everyone I came across I wouldn't be bothered by their actions, well most of them, and I could be 'comfortable' in any and every situation... This numbness and neutrality is the hardening of individuals people speak of and is really counterproductive (MAU).

This reference to hardness is not surprising when prisoners under such conditions simply do not feel safe such as one respondent starkly stated:

"I'm more violent and intolerant than I've ever been mainly because here its sheep or wolf and I refuse to be eaten" (MAU). While another respondent offered a similar assessment stating, "The cell is a place where we are to feel comfortable and secure when you double bunk you lose that and the result will ultimately end up in violence" (CBI). Substantiating this suggestion another prisoner poignantly stated the following:

> Sharing a cell is no good for most people. Myself I find it hard to live with people when I'm in my everyday life on the outside. In here I'm finding it harder I feel like smashing and slicing my cellmate and I don't think like that in everyday life (CBI).

Notably, even staff at the medium security prison Warkworth filed a complaint under the labour code, arguing that double bunking had put them in danger (CBC News, 2011). If guards do not feel safe under such conditions, why should a prisoner?

Further to the contradictory nature of the practice of double bunking in relation to existing policy calling for safe, secure, and humane custody, the Correctional Investigator also identified the fact that double bunking means an inevitable loss of privacy and dignity. Predictably, if you consider the structural features of the cell in which the respondents were confined, one prisoner confirmed this fact by analogising his experience with the metaphor of being locked in a bathroom:

> …the only way I could describe this to a average person is imagine locking yourself in a average size bathroom for a few months with another man no privacy for using toilet and highlight of the day is getting to go run out back in the kennel for an hour and a half (MAU).

While another prisoner maintained that, "I would have to start by saying that having to share a box the size of a bathroom, with another man, has been the most degrading experience of my life" (MAU).

The above statements being synonymous with the declaration that putting two prisoners in one cell means an inevitable loss of privacy and dignity sheds light on the essential need for human beings in any situation to have some privacy, let alone in a prison environment. Yet, as one prisoner under these conditions recognizes, "The need for personal space and time alone is

completely disregarded by CSC" (MAU). Still another respondent observed, "It's so hard to be crammed up in such a small area for anybody" (MAU). As it became apparent, this is especially so during times of personal distress:

> Forget about having any alone time. If you're given bad news from the street, or if stress levels go up alone time is no more. So there's always a sense of anger at the system for letting this happen to grown men (MAU).

Perhaps most people take for granted their right to physical privacy from day to day, and if this is true for those moments when almost anyone would require some solitude, including in moments of personal distress, it is especially true for such things as using the washroom or getting changed. The following statements therefore indicate how the experience of sharing a cell that doubles as a living quarters and a bathroom actually impacts upon a prisoner's individual dignity: "Having to go to the washroom with another person only feet away is disgusting, unhygienic, and did I mention gross" (MAU). Another prisoner related that, "I hate having to shit in front of someone and having to be in the cell when someone else is" (CBI). While another prisoner conveyed, "Anytime the inmate has to go to the bathroom for a bowel movement. Every time you have to go, your dignity level drops a few notches" (CBI). Certainly, too, there are other more thwarting potential drawbacks to having very limited privacy and space as voiced by one respondent who bluntly stated, "the worst part is the farting and not being able to jerk off in peace" (MAU).

Likewise, living in such close quarters is unhygienic and can also contribute to the spread of infectious diseases, which affect the prison population at an exceedingly disproportionate rate compared to the general population. One respondent recognized this with the following statement:

> Double bunking is a headache because your cell mate may do certain things that make you upset, for example: using the bathroom while you were sleeping, brushing his teeth, not cleaning the toilet, not cleaning the cell. It's hard when a person stinks, and doesn't clean himself or his clothes on a regular basis (CBI).

Naturally, if such a word is fitting to describe such an unnatural environment, the implications of such conditions of confinement and assaults on individual dignity, as the Correctional Investigator observed,

also increases the potential for tension and violence. In his words, "It is a practice that is contrary to staff and inmate safely" (OCI, 2012). For instance, as one respondent remarked, "Everyone should have a place to go for solitude [and] privacy. Without that it causes tension in their life. That tension has no place in the cell" (CBI). Still, another respondent stated:

> …no matter how many interests you have in common with someone, when you're in a cage this small for long enough good relationships turn sour and sometimes violent.. No 2 people are alike enough to withstand this and thus end up walking or wailing on each other (MAU).

The above account is no exaggeration and corresponds with recent data released by the Correctional Investigator which cite the fact that CSC reported 1,248 prisoner assaults and fights in 2011-2012, an increase approaching 33 per cent over a four-year period (OCI*,* 2012, p. 25). This is a trend that seems obvious to some prisoners, such as one respondent who declared, "No wonder prison violence has gone up. My experience of sharing a cell with another inmate is very unpleasant" (CBI). Another maintained, "Sharing a cell with another inmate in prison is an unpleasant experience. Spending the majority of the day in a cell with another person is frustrating and definitely could lead into a violent situation" (CBI). This was again reiterated by one prisoner who shared the following:

> Myself I'd almost rather be in the hole then have a cellmate. I have a hard time sleeping and I get meds for that I still wake up at night from time to time while I'm on my meds the meds help me go right back to sleep instead of staying awake. Having a cellmate he keeps me awake at all hours of the night and what not we have had an argument and he accused me of being racist. This double bunking is causing fights that would otherwise not happen it's no good build more units within the institutions. (CBI).

The fact is that double bunking does make for a volatile environment. Quite literally, one prisoner described the explosive nature of being placed under such conditions:

> No one likes being told what to do, and most people do, and most people don't enjoy having to tell someone else what to do so they remain

> comfortable. Most people are stuck somewhere in the middle second guessing themselves, or worse, holding all that spite and anger inside. A lot of people inside are literal time bombs waiting to go off and it's no wonder after having to learn to adapt to such conditions people get out and re-offend or develop excessive habits, unhealthy relationships, and/or mental problems (MAU).

This estimation was confirmed by another respondent who stated:

> I have had some cellies that I have hated and this has put me in some very bad spots. Because it is very hard to ask another person to leave. Or if he was in the cell first, it's even harder. But if people are like me, then we just let things build up. Then when we can't take it anymore, that's when someone gets hurt (CBI).

What is more is the fact that it is not only independent observers and the prisoners themselves that identify the volatility of the modern correctional environment. CSC as an organization is in fact quite vocal about the challenges that they face in carrying out their mandate as a portion of the following report details:

> Complex challenges in CSC's operating environment creates pressures and demands related to an offender population with more extensive histories of violence and violent crimes; previous youth and adult convictions; affiliations with gangs and organized crime; higher rates of infection of Hepatitis C and Human Immunodeficiency virus (HIV); a disproportionate representation of First Nations, Metis, and Inuit offenders; Serious substance abuse histories and related problems; and serious mental health disorders (CSC, 2012, p. 3).

Yet, in considering these "complex challenges" it is difficult to fathom how it is that compounding the situation by placing two "complex" prisoners in a cell designed for one seems reasonable. To answer this, CSC has begun implementing a Shared Accommodation Assessment (SAA) that per Commissioner's Directive 550 seeks to "screen offenders against a number of criteria including compatibility, vulnerability, and predatory or permissive behaviour to determine suitability for double occupancy"

(OCI, 2012, p.27). Although, as the OCI found, in a number of occasions the procedures for assessing personal suitability and compatibility have at times been found to be incomplete, inappropriate and or lacking in proper documentation, and in one case resulted in a homicide (OCI, 2012, p.27). When all of the responses were gathered together, compatibility emerged as a theme as the following comments illustrate:

> It's tough when you have to live in such close proximity with other peoples habits. What I try to keep in mind is that someone else is having to live with mine. Some people I get along with better than others. I've strengthened some friendships and I've ruined others. I guess it really depends on who a person is bunked up with. I have a touch of OCD so I can get pretty irritated over small things. I try to stay cognizant of that because these are my issues and not someone else s but sometimes I can get pretty annoyed (CBI).

> With me being antisocial and not liking people too much I have to say that I have been extremely lucky to have had cellmates who are compatible to my lifestyle and interests and the fact that I've met them before helps too. I find that if you are a positive altitude kind of guy it rubs off on a cellmate and the experience is better (MAU).

> In the aspect of having company from time to time it's okay, if your compatible that is. But just like any person to person relationship spending 100% of all your time with one individual things can go sour really quick (MAU).

> Sometimes it's ok because you've got somebody to talk to, but everyone's got their flaws and annoying habits so it's also very hard sometimes especially when you are locked up with the person for most of the day! It's even harder if you and the other person are not compatible! But in my eyes nobody should be double bunked. It's better for privacy and it would cause less issues among inmates! (MAU)

Ultimately, in addition to the potential for violence and other disturbances, the practice of double bunking tends to turn the correctional system away from its intended purpose as a place of rehabilitation into something quite

different. Perhaps this is what the Union of Canadian Correctional Officers was referring to when they indicated the following in their *Critical Review of the Practice of Double Bunking Within Corrections* (UCCO, 2011, p. 14): "Should the overcrowding of Canadian correctional facilities continue, the days of rehabilitating and re-socializing offenders will disappear". One respondent in this study agreed with this position:

> Being forced to listen to another element of criminality; the persons story; their level of eagerness to change, all affects my personal quest to change for the better. Adapting to that element is not beneficial to criminal, or society in general (MAU).

Citing recent academic research, UCCO (2011, p. 6) argues that "For many offenders, this type of environment may in fact prove to be criminogenic, effectively resulting in offenders being released into the public who have the same, if not greater, propensity towards crime when they were first admitted".

Inevitably, as you increase the population of a penitentiary there is also a concomitant impact on the infrastructure of the prison, which becomes pressured to do more with less. These impacts are felt at every corner of the prison from the cell itself, access to programs, health care/mental health, education, vocational jobs, and also on the case management team's ability to handle their caseloads.[7] Professor Allan Manson, whose academic work specialises in prisons, made the point in a recent documentary on Kingston Penitentiary: "You can pop 100 new cells... What about health care? What about food? What about visits?" (Spence, 2012).

In the case of double bunking prisoners recognize this first and foremost in their cell space: "The storage space is far too limited to house two peoples' belongings" (CBI). Another prisoner stated:

> Also the Collins Bay double bunking cells are a joke because it's designed for a single cell all they did was add a bunk on top with the light directly in your face at least they could adjust it to the centre of the cell. They're not enough shelves, hooks, like at least if you're going to put in a bunk use your common sense and add shelves and hooks. Unbelievable (CBI).

Beyond the physical space of the cell, the waitlists for access to programs also get longer. The position of the Office of the Correctional Investigator,

which is in line with available evidence, is that: "inmates should be actively engaged in programming... as soon as practicable after admission, regardless of sentence length, security level, or parole eligibility" (OCI, 2012 p. 37). Yet, as the Correctional Service of Canada goes through its largest physical expansion in cell stock ever, it is also managing a 295 million dollar reduction in its operational budget impacting programs, services and supports for offenders (OCI, 2012, p. 43).[8] Although not quantifiable by my limited resources, it is an observation that an exceptional amount of prisoners are waiting even longer to enter their correctional programs, while an even greater amount compete for scarce work assignments offered throughout the institution. This shows how the focus no longer seems to be corrective and, as the UCCO (2011) warned, CSC now seems to be warehousing prisoners until they are released back into the community (OCI, 2012, p. 14). On this point, one prisoner observed, "We are warehoused here and basically forgot about" (MAU), which as recent evidence seems to show can also be a breeding ground for gang growth and recruitment. The Correctional Investigator confirmed this in an interview with Evan Solomon on the program *Power & Politics*, stating that it is not surprising when there are "not a lot of other things to do". Supporting this argument is the fact that gang memberships have, according to the most recent data available to the public, risen by 44 per cent over a five-year period (Solomon, 2012a).

Yet, peculiarly, the divestment of correctional programs seems to have corresponded with the investment of security programs such as the 250 intelligence gatherers hired throughout the 57 institutions that CSC manages (Solomon, 2012a). Meanwhile, all part-time chaplaincy staff have been given pink slips beginning this fiscal year, leaving only the 81 full-time chaplains, eighty of which are Christian, to deliver spiritual services to a complex and diverse population (Solomon, 2012b).

It is hard to understand how it is justifiable to diminish programs and supports for offenders while making the environment harsher and more restrictive. Logically, one would expect that prisoners would be in even greater need under such conditions and quite possibly even more receptive to these interventions during such large-scale change. Yet, as the experiences captured here shows, a state of anomie is being manufactured:

> This experience is degrading demoralizing and has no rehabilitative qualities at all. It makes you into an angry and pessimistic person it

> changes you for the worse and being a recidivist proves how hard it is to change what this place turns you into (MAU).

The responses gathered here all seem to reflect a common element of environmental determinism. To quote the political activist and writer George Jackson (1970, p. 19): "To determine how men will behave once they enter the prison it is of first importance to know that prison. Men are brutalized by their environment – not the reverse". This is an important consideration to keep in mind especially as the Conservative government ploughs forward with their 'tough-on-crime' agenda despite all of the available evidence from CSC as an organization, the frontline workforce, the academic research community, and statistical findings promulgated by the federally appointed correctional investigator that demonstrates the inherently damaging nature of the practice of double bunking. It is hoped that if there is any validity to be found in the critical outlook maintained by these parties that the experiences captured in this small study will provide some essential nuance to the fray.

There is no doubt that it is an easier task to identify those aspects of the system that are faulty than it is to propose solutions to those problems. This is especially so in the correctional system, where at the end of the day it must be recognized that CSC is responsible for respecting the sentencing decisions handed down through the judicial system. However, in the words of Kim Pate of the Canadian Association of Elizabeth Fry Societies, "Putting people in multiple-person cell accommodation actually creates unnecessary stress It's long been regarded as creating more harsh conditions than, certainly, the judge who sentenced the person ever intended" (Paperny, 2012b). The fact is, that double bunking, with its ubiquitously nefarious influence on the prison environment is fundamental to the difficulties that the Correctional Service of Canada faces in carrying out its mandate.

ENDNOTES

1 This figure must be interpreted with caution. CSC is also closing three prisons – Kingston Penitentiary, the Regional Treatment Centre in the Ontario Region and Leclerc Institution – at a loss of approximately 1,000 beds.

2 "I am not what I once was" is from the title of Ernest Dowson's 19th Century poem.

3 As outlined in the handbook given to newly admitted prisoners.

4 A mother institution is the initial penitentiary placement for an individual. It is the

institution that an individual would normally be returned to if he or she violates their parole conditions.

[5] New arrivals often spend more time in their cells as a result of their low seniority for work assignments or programming.

[6] MAU denotes confinement at Milhaven. CBI refers to Collins Bay. Spelling has been adjusted in the interests of facilitating reading.

[7] Each prisoner is assigned to a case management team consisting of a Parole Officer and a COIL (Frontline Correctional Officer) who will manage the case and complete relevant paperwork for decision-making purposes.

[8] Part of the deficit reduction action plan (DRAP).

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Conservative Strategies for Dismantling Independent Oversight and Advocacy

Joe Convict

If any government wants the power to control or destroy a charity that does not or will not conform to state or partisan interests, that government must first subvert the autonomy of that charity. This can be accomplished very effectively by getting that charity fatally addicted to government funding. This in turn makes them vulnerable to the whims of state ideologies and systematic sabotage. Further, it disconnects them from the protection of public opinion by alienating them from their support base that would normally have been informed about their cause through the process of fundraising.

Sadly, this is no obscure conspiracy theory. This is exactly what has happened and is happening to prisoner advocacy groups, charities, and many other non-governmental organizations (NGOs) throughout Canada. The government is utilizing a very ancient warfare strategy against its own citizens, in order to silence any opposition to their increasingly totalitarian agenda, which is not restricted to the law-breaker. You may know this strategy as the myth of the Trojan Horse. The once seemingly altruistic motives behind the government's funding of non-profit prisoner advocacy groups have been tragically revealed.

For example, let us look at the recent demise of Life Line, a lifers' support group that gave up more and more control to the illusion of easy government funding. This then allowed for the methodical infiltration of government minders and oversight, the end result of which was that their funding was arbitrarily pulled. The group no longer exists (Griffin, 2012).

Below are a few more examples of conservative funding cuts that are negatively targeting and defunding all NGOs and charity groups, those who engage in any kind of social justice advocacy that might affect prisoners' rights, either directly or indirectly. The John Howard Society (JHS), HIV/AIDS groups (Paperny, 2012), street-level outreach and health clinics, up to 80 per cent of funding to all aboriginal advocacy groups, all federally contracted ambulatory psychiatric nurses, contract religious leaders (i.e. the Salvation Army, M1M2, Community Chaplaincies across Canada), and any other poverty groups whose main clientele consists of the poor, street people, prostitutes, drug addicts, mentally ill, or prisoners and ex-prisoners (MSCM Montreal, 2012). This is a longstanding strategy to destroy hope because a prisoner who, out of sheer despair, has no faith, has no hope, and is less likely to resist the abuses by state and prison officials.

I am unsure how bad the JHS offices across the country have been hit as I have been unable to reach them by phone for some time, but they are surely next on the chopping block. JHS was once known as Canada's oldest prisoners' rights advocacy group. Advocacy on the part of local JHS offices is already next to absent in my communities, leaving the national JHS to do much of this work. As funding from other streams has dried up, they have become more dependent on government support. They have very publicly declared themselves to be a partner of the Correctional Service of Canada (CSC) and have been largely reduced to an ex-prisoner support group almost solely funded by the state (United Way, 2008).

Each program JHS receives funding for must first conform to a strict standard of zero advocacy for those still incarcerated if that advocacy is critical of the state, prison policy, or prisoner treatment. Even if a prisoner were to complain to JHS about being tortured and needing help, the organization is mandated to remain silent or risk having all future funding cut (I speak from personal experience). This once proudly independent advocate for real prisoner protection, oversight, and human rights has become just another generic arm of government-styled welfare. This is great for those being released but does nothing to improve the ever-deteriorating conditions within prisons themselves. From my perspective, the new position of the JHS only perpetuates the state's totalitarian agenda of creating a secretive and barbaric prison system, free from accountability.

There is an entrenched culture of arrogance and impunity within prisons. They are more unjust and corrupt than any other arm of the criminal justice system. For the record, the Office of Correctional Investigator (OCI) is not now, nor has ever been, an ombudsman. They are under the same act as CSC, which is the *Correctional and Conditional Release Act* (CCRA), more specifically, CCRA sections 158-196 (3)(b)(ii).

Furthermore, all investigation reports and comments presented to Parliament or the public must first be censored, vetted, and preapproved by the Public Safety Minister, who is also in charge of CSC. The OCI by law cannot act without ministerial consent or as an ombudsman for the federal prisoner, because this would assume their official role to be an advocate for the protection of the rights of the public as well as the prisoner against CSC and the state. This, however, is definitely not the case. Additionally, to their discredit, in a clear conflict of interest, OCI routinely hires individuals from all over the criminal justice sector, including ex-corrections staff.

Now, by a single amendment to the CCRA, via the so-called *Safe Streets and Communities Act*, the Conservatives' despotic agenda of dismantling all constitutional, legal, and human rights for prisoners has been realized. In brief, the amendment states that CSC now has the power to circumvent all Canadian law or infringe upon any constitutional right, when creating or implementing prison policy in federal prisons as long as they first declare it to be in the best interest of "public safety". This, of course, makes the enshrined right to the least restrictive measures within federal prisons, which are guaranteed under the Constitution, null and void.

What is even more terrifying is their further unconstitutional amendments that give CSC the power to stop prisoners from communicating with anyone outside the prison for any reason. This includes lawyers, the courts, lawmakers, and the media, not to mention family. This can create a complete media and communications blackout for information coming into the prisons (i.e. radio and television), as well as periodicals and literature (Ormsby, 2012). Such tactics amount to a complete silencing of free speech and freedom of the press, and a total abrogation of protection under the law. The Conservative Party, our government, has once again made it completely legal to hold federal prisoners totally incommunicado, a clear contravention of Canadian and international law.

They have even gone so far as to support new private member's legislation (Bill C-293) that grants CSC the power to declare a prisoner a "vexatious griever". When invoked, CSC removes the prisoner's ability to complain about anything without the prisoner first being given leave by the courts to do so. What this literally means for the prisoner's ability to access justice is the total loss of all right to seek internal resolutions for abuse, no matter how legitimate the complaint, even a complaint about torture. Now weigh this fact against this country's already overburdened judicial system and the lack of funding for the many court challenges already desired by federal prisoners. Finally, the last nail in the coffin of justice, or prisoners' constitutional rights, is the pre-existing two-tier justice system, under which only the affluent of our society can enjoy full access to the courts or protection under the law. And there you have it, the creation of a diabolically evil, draconian prison system, void of accountability, human decency, morality, or the law.

From a historical perspective, we must remember that every atrocity in which Hitler ever engaged was completely legal according to German law.

I ask all who hear or read these words: Will you sit idly by while the state uses terror tactics to justify the outright persecution and dehumanization of the "lawbreaker/prisoner"? Will you not stand up to save this country's democracy from a government that would utilize warfare and propaganda strategies to discredit or destroy even their law-abiding critics, regardless of whether they are charities, NGOs, or the average citizen? Do not let the assumption of "it can never happen in Canada" blind you to the absolute fact that these things are happening and will continue to get worse unless you proactively step up.

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Mass Murder by Deliberate Indifference

James Bauhaus

On February 15, 2012, a prison in Honduras burned down. Over 350 people died, all of them captives who had been deliberately left to burn to death by their guards (Castillo and Sandoval, 2012). This is an old, common process that never gets fixed. Hated captives are collected and stuffed into tiny cages. Every prison ever built is slowly stuffed with more and more pariahs. A prison might be designed to be humane at first, but every time the police go lock-up crazy, while the politicians spend all the money on pet projects as prison upkeep is neglected. The police, running on autopilot, keep stuffing. When they have their cages filled to double capacity or more, the inevitable happens. As always, the captives, pushed to the breaking point, go mad.

In the case of the Honduran prison, two scenarios are being offered for public consumption. The first version is that maybe the fire was electrical. The second, more sensational version is that perhaps a captive set his sleeping pad on fire and it somehow blazed through the entire prison before anyone noticed or could get a bucket of water (Castillo and Sandoval, 2012).

In the USA, we like to pretend that we do not torture and harass our captives like they do in developing countries. This makes us feel superior, even though it has no basis in fact. We actually have had three of the worst five prison riots in the world, primarily because our police and politicians cage more people than any other nation (5 World's Biggest Prison Riots, 2013). Even China, with more than *four times* the US population cages far fewer people than the United States, the supposed "land of the free" (Tsai and Scommegna, 2012). We just cover our tracks better, having a police-media alliance that agrees, covertly, to report mostly happy, positive news while ignoring or underreporting news of their own corruption, incompetence, and negligence.

How do they get away with this? First, they make their stacks of cages very secret places, restricting access to cameras or voice recorders from the outside world. No one must see or hear what transpires in these hellholes and torture traps. They choke off communications too. For instance, they make phone calls prohibitively expensive for many prisoners and their loved ones (see Jackson, 2007). They also choke off communications by making it embarrassing and humiliating to call anyone. At this prison, every two minutes an annoying digital voice loudly interrupts to unnecessarily declare, "Caller is a convicted felon in prison. Beware". This is unnecessary

because it harangues loved ones or friends with an expanded version of this speech at the beginning of every call. Moreover, captives are permitted to call only four classes of people: relatives, friends, lawyers and clergy. If the phone-monitoring software hears a click, it assumes a call was forwarded or a caller was added and abruptly terminates the call. Each call is also recorded and often monitored by staff, even if the calls are merely piped into a bullpen of secretaries or other prison or jail employees. There is no evidence that the collected calls are ever erased. Captives who use these phone services feed the sharks that cage them and drain life's blood from them and their loved ones and friends.

Prison staff pull many of the same stunts to choke off mail or prevent it from being written. They require hand-written communication in everything except legal material and have been very successful in preventing access to typewriters. Forget word processors. They block access to carbon paper, both to eliminate mail and to boost the obscene profits from their copiers. Most of the younger victims of this system are so poorly educated they do not even know that carbon paper exists.

A more subtle and insidious way that prisons prevent news of these antics from reaching public knowledge is through simple retaliation and extra punishment for being caught trying to educate people. They keep most captives too terrified to say anything. Rather than have years added to their sentences, victims of mass punishment and other illegal harassments shut up and bear the atrocities. Captives have developed a culture of hiding in the crowd and hoping that their torturers will mistakenly pass them by.

The braver ones, who are few, will almost never try to obtain humane treatment for everyone but rather will often try to sell out everyone else to obtain special treatment for themselves alone. At its worst, this sell-out philosophy creates exactly what the tormentors need most to abuse their victims: a culture of secret snitches and opportunists eager to assist in nefarious projects such as baiting operations, evidence planting, false witness, and other graft or corruption. A common scenario is planting dope for guards to "discover" and earn bonuses or prisoner property theft rings, where pet prisoners and guards conspire to send enemies or troublemakers to disciplinary units just to steal their TVs, stereos, and other valuable appliances.

Alongside these sell-outs are the instigator types. They have not the courage or wherewithal to stand up themselves to demand humane or fair treatment, but they will try to inflame others, more ignorant and trusting, to

do so in their stead. They are usually older and full of stories of how they were heroes once, but now have paid their dues and pass the torch to others.

One such prisoner was Tommy Holcomb, who almost got us all killed because he wanted to burn down the cage because the trustees stole the sugar for the coffee. As soon as he lit the match, the jailer slammed the door, and fifteen people nearly died of smoke inhalation.

Coffee sans sugar does not sound like a very good reason to set your cage on fire with you in it but, coupled with tiny minds in large, muscular bodies and a history of harassment, a free person may begin to see that not much reason can penetrate the emotion of victims poked from all sides with sharp sticks. Also, there is the belief that jailers will not simply watch you burn to death. Any non-jailer would unlock the cage, but Tommy Holcomb has third degree burns over most of his body that testify that the jailers are trained to be very different from normal people. They will not risk their jobs to save one captive's life from death by immolation. They will ignore the screams of pain and instead try to find their boss to ask what to do. If he is so timid of his employment risks that he decides to wait until he can find and consult with his boss, 350 or more people burning to death is a small price to pay for making certain that one retains his fat government job. After all, no one was ever fired for leaving prisoners in jail.

The same ethos applies to the Honduran situation. No one will be fired, no matter what the cause of the fire. Whether electrical in nature or caused by an idiot setting his sleeping pad on fire, all blame in such settings accrues to the victims. It is simply impossible for police overstuffing and political greed to cause prisoners to go stir crazy or one to go mad and murder all the others with his madness. No, in the police world, even prisoners driven mad are responsible for their madness. News accounts will confirm this fact.

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Changing Our Image

Gwendolyn Levi

The ageing of the world's population represents a major success story, while also creating a discrepancy between the image of an older woman and the way they actually feel and act. As society progresses, we are living longer, through new technology and medical research we are delaying the ageing process. Many societies have drastically reduced the incidence of disease, along with the rate of death. Being the fastest growing segment of the population has placed a new emphasis on this age group. The study of ageing has now become a specific discipline called gerontology.

Representing 8.9 per cent of the U.S. population, there are no clear-cut definitions for periods of the ageing cycle. Old age had typically been regarded as beginning at 65, corresponding with the retirement age for workers (WHO, 2013). But today's seniors are fully engaged in life's activities, with many women 65 and older still participating in the workforce. Many are our most prominent and influential people in our communities. A significant number of seniors living today have so much to look forward to: a 'master status', increased affluence and new work practices allow opportunities to explore lifelong interests and more self appreciating goals. Gone are the negative views of being old, of giving up their roles and settling into a state of inactivity; a new area of continued development seems to be sought.

The so-called baby boomers are becoming our next generation of seniors. The designation of being old is becoming more of how one perceives him- or herself than actual age. Membership in this group is involuntary, since living allows one to be included. Our perceptions are changing. We now feel more entitled to do what pleases and satisfies us, to slow down and let go of the strain of obligations. Essential things of life gain greater importance. These factors are combining to lessen the trauma of growing old:

- Emphasis on fitness, regular exercise, physical and mental maintenance
- Better medical care, control of disease, reduction in strokes
- Nutrition, wellness programs and a holistic approach to life
- Continued social involvement

Elderly people who stay socially involved tend to be better adjusted overall. Just as young people feel satisfied from achievements, so too do older citizens receive gratification from being useful and productive.

We are living in comparatively great times for people growing older. In some communities, the increasing demand for services and programs is being met full speed to assist seniors in living full, vital, and dignified lives. Whether they live independently, require assisted living or become residents of long-term facilities, there are many organizations and government programs to ensure that our seniors receive the responsive, respectful assistance in all aspects of their lives. Such programs involve nutrition, wellness, exercise, mental enhancements and referrals to accommodate every need and concern.

Holistic spiritual understanding has also become a way that seniors are pursuing different courses to realize their full potential. By embracing this new attitude and putting into practice positive reinforcement, the assurance of a graceful elderly lifestyle is enhanced (Hart, 2012). Spiritual understanding of life's courses helps the ageing to manoeuver through each life cycle with less adverse outcomes. Having a life of faith, believing and operating in the fullness that this universe has to offer, assures the elderly of the peace of mind necessary to not only survive this life's experiences but to thrive and continue to grow in it.

At Maryland Correctional Institution for Women, the opportunity exists for one to begin a total overview of their individual ageing process in a positive manner. The Women of Wisdom (W.O.W.) is an organization allows prisoners to be in contact with all the components necessary to participate in securing and maintaining a healthy lifestyle, and we invite others to join us in fulfilling our destiny of graceful thriving during this experience.

The W.O.W. organization was established to enrich and enhance the quality of life with emphasis on the senior incarcerated population. This group was created to better ensure that the targeted group (50+ years of age) is prepared to deal with the issues of incarceration and re-entry into society. Our purpose is to provide an avenue for awareness, new initiatives, better resource utilization, and the complete well-being of our senior population through:

- Answering and addressing issues related to wellness, and other topics in the area of women's physical and emotional well-being;
- Connecting with outside resources that share mutual concern (e.g. NWPP, AARP, Department of Aging, Suburban and Johns Hopkins Hospital); and

- Promoting cooperation and input with existing programs and departments at MCIW, to allow the unique needs of the senior community to be recognized.

Going forward, the Women of Wisdom organization will provide a unique opportunity for its seniors and MCIW to be on the forefront in the newly raised issue of incarcerated seniors. As this population has increased, institutions are coming to realize that the challenges facing them must be met with foresight, planning and the involvement of the incarcerated seniors. Women of Wisdom through its membership of 50+ will ensure that MCIW's older residents are successfully equipped to re-enter society. Through informational seminars, guest speakers, workshops, and other activities, W.O.W. will be trailblazers in recognizing and taking the initiative to deal with the needs of this rapidly growing segment of our prison population.

Ms. Davis (education) is our staff advisor. The National Women's Prison Project (NWPP) with Mrs. Alfrieda Robinson-Dawkins serves as our technical advisor and assists with the program coordination. Thanks to the following for providing additional information and ideas for this article: the Older Women's League (O.W.L.), Our Bodies, Ourselves-Boston Women's Health Collective and Peter Abrahams at Health for Seniors.

To survive this experience and to thrive as a result of living it.

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The Big Lacuna

Dean Faiello

Under a steel-grey sky, behind Attica's concrete wall, a grizzled counsellor arrived at his office with a tall paper cup of coffee – black, two sugars. Seated behind a brown faux-wood desk, in a sterile, unadorned office, he booted up his computer. The inbox held a message from Albany. Sipping the somewhat bitter brew, he opened the e-mail.

It was a memo from the DOCCS Commissioner: "Department of Corrections and Community Supervision counselors will no longer be referred to as 'counselors'. Effective immediately, the new title shall be 'Offender Rehabilitation Coordinator'. Furthermore, prisoners shall be referred to as 'offenders'. These changes in policy will be discussed at administrative meetings in each correctional facility. See the schedule below for further information". Scanning the list, the counsellor noted Attica's meeting would be Monday morning in the chapel. As he unconsciously fingered the blue nametag on his shirt pocket, he looked out the narrow window of his office. A steady drizzle had begun to fall.

Although it seemed to be a matter of semantics, I could understand the Department's reasoning for the change in titles. DOCCS staff does not provide counselling per se. They coordinate prisoner participation in prison programs. However, due to few openings in those programs, especially at Attica, such coordination often consists of merely informing prisoners that they are on a waiting list.

I was hopeful that the new emphasis in rehabilitation signified a change in direction – that rehabilitation would be recognized as an important part of incarceration. Perhaps it would be just as important as the punishment, which often appears to be Attica's priority.

My optimism, however, was short-lived. On the day of the administrative meeting to discuss the changes in titles for counsellors and prisoners, the entire prison was locked down. No 'offenders' were allowed out of their cells. The school building was closed; classrooms were empty. Alcohol and substance abuse programs were shut down. The library was dark. Recreational yards were silent except for the keening cries of seagulls circling and diving for scraps of food. No explanation was offered by the guards as to why the cells remained locked. I stood at my gate, dressed, ready for work at my assigned program. The prison was eerily silent except for the banter of prisoners who sat in their cells, wondering what was going on. Giving up hope of going to work, I took

off my boots and lay on my bunk, reading Ralph Ellison's brilliant novel, *Invisible Man*.

About an hour later, my neighbour's cell gate cracked open. An officer yelled down the gallery, "Get dressed. They want you in the chapel". Since my neighbour worked in the mess hall, which also served as the chapel, I did not think much of it But when he returned after only twenty minutes, I asked him what was going on.

He laughed. "What a bunch a dumb-asses. I go down to the chapel, and all these civilians are sittin' 'round, starin' at each other. They tell me, "The sound system doesn't work. Can you fix it?" So I look at it. There's no power to it. They didn't know how to turn the damn thing on. So I flip the switch, test the microphone. It works. What a bunch a 'tards".

"Well, how long you think they gonna be down there?"

"Probably all day. They're just getting started".

At noon, the clomp of boots indicated that an officer was walking down the gallery.

"C.O., what time we comin' out?"

"Dunno".

At 1:00pm, the officer returned with a clipboard to take the chow list. Beef cubes were on the menu. I stayed in my cell until 3:00pm when the 3-to-11 shift came on duty, and the cell gates opened. No one ever explained why the prison was locked down. I had an uneasy feeling about the administration's new emphasis on rehabilitation.

About a week later, I met with my counsellor for my quarterly review. A sheet of paper with his new title printed in large font, "Offender Rehabilitation Coordinator", was carelessly taped to his computer. The usually brief meeting serves as an opportunity for me to review my correctional status – Security Level: max; Transfer Status: not eligible; Mandated Programs Status: wait-listed. I am required by the DOCCS to complete two rehabilitative programs, ART (Aggression Replacement Training) and ASAT (Alcohol and Substance Abuse Therapy). I would really like to participate in those programs, but I have been wait-listed for five years. However, all of those programs have over 1,000 men on their waiting lists. According to my rehabilitation coordinator, I will most likely never see those programs while I am at Attica.

Presently, there are only two ART classes running, with fifteen men in each class. Approximately 120 men per year complete the program. At that

rate, it will be nine years before the current waiting list is exhausted and that does not include the 1,200 new prisoners that arrive at Attica every year.

The situation in the ASAT program is even more dire where there are presently 1,400 men are on the waiting list. However, there is only one ASAT counsellor. Sixty men per year complete the program, which means it will take twenty years to exhaust the current waiting list. There used to be two ASAT counsellors. The other one quit and went to work at another prison. So did the ART counsellor.

The exodus from Attica of rehabilitation coordinators (there are presently four vacant positions) creates a problem not only for the administration, but for us prisoners as well. Fights break out at Attica nearly every day. Most likely those men need the ART program. The officers, who risk injury every time they have to respond to an altercation, would also benefit from prisoners having more access to anti-violence programs.

Even those of us seemingly unaffected by a fight in another block, or another yard, are impacted by prison violence. When an alarm sounds, all corridor movement stops. Programs are halted. Classes may be interrupted. The schedule of the entire prison is set back, sometimes causing men to never reach their assigned programs. I have seen men miss an opportunity to speak with the Deputy Superintendent of Programs, their rehabilitation coordinator, or attend religious services because one-thousand feet away two men cannot control their emotions, choosing instead to punch each other in the face.

One would think, in view of the ramifications from a single fight, that the administration would welcome programs taught by volunteers, community members willing to donate their time and efforts to help prisoners, officers and the administration to maintain a peaceful environment. The Alternatives to Violence Project (AVP) is a nationally recognized program designed to do that and is taught at hundreds of prisons throughout the United States. Yet, Attica refuses to pay the salary for one officer for the three days of the program so that AVP can take place in Attica's visiting room. Instead, AVP is permitted to take place only four times a year when the school is shut down, its classrooms empty and standard officer coverage is available. In other words, at no additional cost to the administration. Yet, I wonder what the cost is to the prison for the infractions and hearings needed for those involved in fights, for maintaining special housing units overflowing with prisoners convicted at those hearings of fighting with weapons, and the sick leave and medical costs for officers injured breaking up those altercations.

The Alternatives to Violence Project succeeds at reducing prison violence through a very simple method: communication. The first time I participated in one of the workshops, I was surprised to find that much of it involved fun exercises like pantomimes, musical chairs or tossing and catching funny-shaped balls and bean bags. At first, I thought this was silly. What has this got to do with reducing prison violence? But I slowly came to see that the familiarity and camaraderie built during AVP exercises serve to form friendships and understanding that continue long after the workshop is over. Much of the program also involves dealing with serious issues like racism, misconceptions and stereotypes. However, simple things like nicknames for the participants stayed in my mind. Months after I had attended a workshop, I ran into a participant in the mess hall. Immediately, I recalled his nickname: Shinin' Shelley. We greeted each other, smiling and laughing like we were still in an AVP workshop.

In order to help maintain relationships and understanding built during workshops, the AVP volunteers conduct monthly maintenance meetings. Open to all prisoners who have participated in AVP workshops, the maintenance meetings reinforce the principles learned in the program: communication, compassion, patience and empathy.

I often wonder what Attica would be like without its army of volunteers, without the AVP workshops, Cephas meetings (a prisoner support group created in response to the 1971 riot), meditation classes, religious studies, Alcoholics Anonymous and Grief Support meetings. What if the volunteers were to tire of the problems associated with getting in and out of this prison, the periodic hostile reception at the front gate, the requirements for medical clearances, the hassles of being fingerprinted, the frustration of driving hours to get here (and get back home) only to be told, "There's no gate clearance here for you. Try again next week". How much uglier and more violent would this place be?

Without volunteers, the Department of Correction, and therefore its system of rehabilitation, has very little to offer me besides a cell, a mattress and a toilet. Of the 2,200 men at Attica, nearly one-third, 700 men, have no program whatsoever. No access to school, no prison job, nothing to do except go to the yard or watch TV. Their days are filled with Cinemax and TMZ.

Sadly, they have few options. Simply reading a book at Attica requires dedication and enormous patience. Most men have no access to the library; it holds only twelve men at a time. Because of its limited hours, 150 men

can visit it over the course of a week. Since call-outs are repeated each week, that means 2,000 men cannot get there, and stand little chance of reading a novel or even a newspaper.

Our families are prohibited from sending us books due to inane package room rules. On my prison salary of seven dollars a week, buying books is prohibitive. My prison pay is spent on stamps, deodorant and food. Because of the state's fiscal crisis, that seven dollars must also go toward tee-shirts, socks and underwear.

In order to deal with the frustrations of prison life, DOCCS created a new program called Thinking For Change, tagged with the cute acronym of T4C. Intended for prisoners with no program, it emphasizes techniques for dealing with the correctional environment: embracing patience and transformation. Counsellors travelled to Albany to learn the curriculum and how to facilitate the program. After conducting a few twelve-week modules, Attica shut the program down, citing a lack of manpower, even though only two counsellors were needed, four hours per week, to run the program. Evidently, Attica's administration was not too concerned about change.

In an effort to provide education to the incarcerated, at no cost to them or the administration, a prisoner organization called PULL (Prison Urban Leadership League) proposed a writing class. Volunteers from SUNY at Buffalo, professors with master's and doctorate degrees in English, offered to come to Attica to teach writing skills. The syllabus consisted of classes in spelling, grammar and sentence construction, with the goal of essay writing. The curriculum indicated the study of renowned writers like Hemingway and Steinbeck, essays by prison writers such as Nelson Mandela and Martin Luther King, Jr. The administration said they were not interested in such a program, refusing SUNY professors the opportunity to teach Attica s prisoners.

My first experience with volunteer programs, over five years ago, was a creative writing class taught by an English professor, Doran Larson, from Hamilton College. After teaching all day at Hamilton, he would drive three hours to reach Attica. The class presented a real challenge to me because I had never done any creative writing. My only experience with putting words to paper consisted of high school essays, not exactly erudite works of brilliance.

After first arriving at Attica, while I languished in my double-bunk cell with no program and no prison job, a prisoner passed by and saw me holding a collection of works by Edgar Allen Poe. As I read "The Cask of Amontillado", horrified by the sounds of bricks and cement forming a permanent prison, he

interrupted my reading and asked if I was interested in attending a writing class. Without pausing for careful consideration, I said sure. I was desperate to participate in anything that would free me from my dark cell.

I had to wait about a month before attending the class, so I filled my vacant hours (of which I had many) by writing about something that had deeply affected me – my mother's death from ovarian cancer when she was still a vibrant, healthy woman in the midst of a career. The writing was slow and painful. I had to stop after each sentence. But as the clumsy paragraphs gradually formed pages, my thoughts on the horrific experience began to clarify, giving me insight on a hazy, alcohol-and-drug suffused period of my life.

By the time I attended the writing class for the first time, I had a small pile of pages, disparate thoughts scratched onto a yellow legal pad. After submitting to Professor Larson that first draft exploring my mother's mortality, I expected to get it back with some minor corrections and advice, and I could move on to another subject, something less painful. Instead, I had to labour through five more drafts, revisiting my mother's deathbed, in her home, many times. Yet, after one year of frustrating toil, when I nervously held a magazine containing my published work, the thrill gave me new purpose, a raison d'être.

I soon realized that volunteer programs were my only avenue for self-improvement. The creative writing class motivated me to become a voracious reader, devouring collections of essays and short stories, tackling novels by eminent writers like Hemingway, Steinbeck and Fitzgerald. My vocabulary slowly grew, augmented by *New York Times* crossword puzzles, a Webster's dictionary and a Roget's thesaurus (references that Hamilton College generously donated to the writing class).

My educational path led me to another volunteer program at Attica, the meditation class. I had only a vague idea of what meditation entailed, mystical gurus sitting cross-legged on thin mats, their serene vibrations spreading across continents in an attempt to effect world peace.

I was fascinated by the concept of inner peace. I had my doubts whether I could ever achieve such a thing, but if its pursuit would get me out of my cell, away from the swirling chaos and raucous din that pervades prison, I was all for it. I soon found myself cross-legged too, motionless and in pain, on smouldering black mats in a decrepit classroom painted dentist-office green. But after some practice, struggling to rein in my agitated mind, the

resentments to which I had clung for many years began to dissolve. The anger encoded in my DNA, my immanent hostility toward the world, abated. Antipathy left my body, escaping through the steel casement windows of the meditation room, absorbed by the fat clouds of a tangerine sunset.

While the view from that second floor classroom was inspiring, the reality of prison education soon set in. Many men, once their initial curiosity was satisfied, lost interest. They were not willing to do the work. Some men, frustrated by the inability to even set foot in classrooms because of limited space and long waiting lists, gave up. The meditation room could accommodate no more than twelve men. The creative writing class offered seats for only eight men.

Some programs offered no seats whatsoever. The Sex Offender Program (SOP) has not existed at Attica for over five years. I do not know if that is a result of prison retribution or simple apathy. The IPA (Inmate Program Associate) class, which teaches men to be facilitators, to teach rehabilitative programs like ART (Aggression Replacement Training) or GED study, has not been offered in sixteen months.

Teaching fellow prisoners has transformed my life. Facilitating programs has given me a sense of accomplishment, a chance to improve my self-esteem, something that has suffered greatly as the years of incarceration have accumulated. Unfortunately, many prisoners who seek that same opportunity have no access to it. The desks are vacant. The chalkboard is blank.

One of the best methods for changing the lives of prisoners and keeping them from returning to prison once released is higher education. Those who obtain a college degree while incarcerated have the lowest rate of recidivism. The Bard Prison Initiative offers college degrees at five New York State prisons. Less than 2 per cent of its 150 graduates have returned to prison. The rate of recidivism for those who leave prison without a higher education degree is about 60 per cent.

During the 1980's and 1990's, politicians like Ronald Reagan and George Pataki took a 'tough-on-crime' stance. Prison educational programs were cut. Governor Pataki ended New York State's Inmate Higher Education Program (IHEP). Congress eliminated Pall Grants for prisoners. Nationally, the three hundred prison college education programs dwindled down to three. Not coincidentally, the rate of recidivism soared to 68 per cent. Societal demand for retribution boomeranged. Instead of educated, rehabilitated ex-prisoners returning to their communities, unchanged individuals left prison and

picked up where they left off – committing crimes like burglary and drug dealing in order to survive. Without an education, they stood little chance of finding employment. Society shot itself in the foot. The 'get tough on crime' attitude resulted in high unemployment and economic deterioration for inner cities. Further, the skyrocketing cost of mass incarceration ($60 billion a year) ballooned state budgets, driving up property taxes and state income tax rates. All of society suffered by footing the bill for America's more than two million prisoners. A study by the Pew Institute demonstrated that every dollar invested in prisoner higher education reduced prison costs by two dollars. Yet, America's hell-bent desire to punish prisoners obfuscates the facts and logic.

Approximately 95 per cent of all prisoners eventually leave prison and return to their communities. If you were to ask anyone, who would they prefer for their new neighbour, an angry, bitter ex-con with no education who cannot find a job, or an educated, transformed ex-prisoner eager to work and contribute to his or her community, the answer would be obvious. Yet resentment toward criminals, whether they are thieves, drug-dealers, addicts or alcoholics, often obliterates clear thinking and common sense. If logic prevailed, ex-prisoners would not be prohibited from holding jobs such as hair-cutting, nursing, teaching or health care. Ex-prisoners would be eligible for subsidized housing so that neither they nor their children become homeless. As U.S. citizens, they would be allowed to vote. Yet, ex-prisoners are prohibited by state laws from all of these things. Jobless, homeless, and rejected by society, it is no wonder that half a million men and women return to prison every year. High rates of recidivism prove mass incarceration does not offer rehabilitation. Our penal system is an abject failure.

Faced with battling an intransigent administration in a feckless environment, Attica's Offender Rehabilitation Coordinator leaned back in his office chair. As he went to take another sip of his coffee, he noticed the paper cup held nothing but cold dregs. Deciding that it was time for meaningful change, he opened Microsoft Office, typed a letter, and sent it to the printer. Once it emerged, he proofread and signed it. He powered down his computer, shut off the lights and locked his office door.

Before heading home, he dropped off his letter of resignation on the superintendent's desk. As he walked toward the front gate, he felt lighter, as if he had shed some pounds. An electric motor whirred as the iron gate

slowly opened. Walking toward his car, he looked at the sky and noticed that the weather had begun to change. The rain had stopped, and the clouds were clearing. He got in his car and left Attica's parking lot for the last time.

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Grievances

Ramon Rogers

The California Code of Regulations, Title 15, Section 3084.1 (a) states: "Any inmate may appeal (file a grievance) any policy, decision, action, condition, or omission by the department or its staff that the inmate can demonstrate as having a material adverse effect upon his or her health, safety, or welfare".

After decades of utilizing the same system the California Department of Corrections and Rehabilitation (CDCR) proposed significant changes to the grievance process by issuing new forms and procedures that went into effect on an emergency status on January 28, 2011. A Form 22 was added as an informal level of appeal to help streamline the grievance process. The CDCR 602 form was reformatted with less writing space, reducing the ability to clearly and completely describe the issue being appealed. An Attachment "A" form was introduced as the only document to be used for any additional explanation. If needed, however, it was formatted to allow only a few truncated lines of text. If you used additional paper, or doubled up sentences between each line, or used a font smaller than 12 pitch, the grievance would be rejected by the appeals coordinator. Officers were not receptive to the new Form 22 and refused to sign or forward them.

If the form was processed, often there would be no reply. Yet, a Form 22 had to be filed first before you could proceed to the first level of appeal on the 602 form. The unit sergeant or lieutenant usually reviewed issues at the first level. If you were not satisfied with the results you could submit the appeal to the second level, which was reviewed by the chief deputy warden or warden. If you were still dissatisfied, you could submit the appeal to the third level, which was the secretary of the Department of Corrections and Rehabilitation. The third level review exhausts 602 appeal administrative remedies. Prisoners and CDCR staff must adhere to specific rules, as well as time constraints, when processing an appeal or the grievance can become invalidated for either party. But, as with any governmental bureaucracy, CDCR's attempt to ameliorate the appeal process has been a huge failure and was only successful in making it visible.

For the past fifteen years I have been a death row prisoner in San Quentin State Prison, California. I avoided filing 602 grievances for fear of retaliation by staff because of the many stories I heard from other prisoners. Even though the California Code of Regulations (Title 15) states: "No

reprisals shall be taken against an inmate for filing an appeal," reprisals are commonplace and exacted with impunity.

I finally caved and filed a 602 grievance when the prison continued to return my parents' mail with a label attached that read: "Deceased, Unable to Deliver". This of course horrified my parents and sent emotional shock waves through my family circle. But after filing the 602, all parties involved (CDCR and USPS) claimed ignorance, not knowing how or who attached the labels. So my 602 was denied at every level. For many years afterward I did not file any grievances. It was a losing battle and a waste of time.

In 2007, San Quentin started a worker program for death row prisoners, which allowed those who met certain criteria to work within the unit without wearing handcuffs or being escorted around by officers. The workers did various general cleaning duties like sweeping and mopping the building. They also assisted in the unit feeding program by setting up the food trays and bag lunches, collecting trash, passing out bi-monthly toilet paper and soap supplies, and assisting the canteen and property officers with boxes and packages. I qualified for a position as the unit clerk, ordering the supplies, writing maintenance work orders, typing disciplinary reports and memos, and formatting files on the computer per the needs of the unit.

When the worker program began, some officers were vehemently opposed to having death row prisoners out of their cells walking around freely and having access to common areas and items normally strictly prohibited. There were incidents of harassment and intimidation toward the prisoner workers by several staff members, but the workers put up with the behaviour in fear of jeopardizing the unique privileges and opportunities the job offered. The workers were reluctant to file grievances causing additional friction with staff because threats of losing their jobs were always held over the prisoner's head.

It is my opinion that having a more exclusive job with a higher position of responsibility and trust made me a bigger target for harassment than the other workers. Incidents against me escalated more when I was promoted from the unit clerk to an institutional disciplinary clerk. Prior to having the job, I experienced no hassles and served twelve disciplinary-free years as a model prisoner. After being assigned the job I was subjected to excessive, even destructive, cell searches, called derogatory and obscene names, was doused with a bucket of water, and received frivolous and fabricated write-ups that caused considerable grief and stress.

One of my first write-ups was when a sergeant saw me walking to my office and did not approve of the military style clothing I wore, even though the facility captain and various lieutenants complimented me on how well dressed I always looked. These were regular prison-issued clothing that I had been wearing for years. Nevertheless, this sergeant made a colossal issue of my creased shirt and pants and polished boots. He said my pants were unauthorized, then ordered me, since I was the clerk, to type my own 115 Rules Violation Report (RVR) for "Altered State Pants". He also confiscated the pants as "evidence". It was an incredulous situation that, at first, other officers thought was a joke. But it was not.

When I brought the issue before the lieutenant, I got no relief. Shortly afterward, the lieutenant left the unit to become the acting facility captain who ended up classifying my 115 RVR as a "Serious" offense. He later returned to the unit and insisted on being the hearing officer adjudicating my write-up. This was a serious conflict of interest, and against policy and procedure. I filed a 602 grievance, and the write-up was eventually dismissed and removed from my record. I also requested the return of my pants and I got them back.

During a cell search an officer confiscated some leather weightlifting gloves and wrote we up for possessing "escape paraphernalia". I filed a 602 grievance against the officer because the gloves were a prison-approved item that was listed on my prisoner property card. With a lot of opposition from the persistent officer and his likeminded lieutenant, my appeal was granted at a higher level. The gloves were returned to me and the write-up was removed from my file. Of course the officer was not happy that I prevailed.

Later, during another search by the same officer, he confiscated extra stamps I had for overseas postage. He also confiscated excess stamps from my co-worker neighbour. When we exercised our option to send the excess stamps home, we learned they were mysteriously "lost" and could not be found. I again filed a grievance against the officer. The prison admitted culpability and agreed to compensate me for the value of the missing stamps as long as I submitted forms to the state board of claims.

There was an officer who continuously berated and humiliated me in front of peers and staff. For months his unprovoked hatred toward me was so blatant and out of control that I finally spoke to various sergeants and lieutenants who ultimately did nothing. Then a responsible sergeant

observed this behaviour and reported it to the facility captain. The misconduct lessened but did not stop. With his open disregard for authority and his escalating threats, I felt I had no choice but file a staff misconduct complaint. After I submitted the appeal, the officer stopped harassing me, but his clique of vindictive buddies picked up where he left off. I forwarded the grievance all the way to the third level of review. The lower level of appeal found the officer did in fact violate institutional policy, but the higher level found no fault in the officer's actions. I could not comprehend the contradictory findings with the overwhelming evidence that was presented. My 602 grievance was ultimately denied and the officer continued working in the unit, spreading his vile hatred and acerbic attitude toward others. At least he stopped harassing me. Unfortunately, his co-workers did not.

One day I was doing inventory and cleaning the law library office, and collecting the clerk's mail from the mail table. This was a common practice that I had performed for over three years that all staff were aware of. I was not doing anything wrong or out of the ordinary. But one officer decided to retaliate on me for the staff misconduct complaint on his buddy. So he wrote me up for entering the law library and being at the mail table. Of course he put his own special twist to the write-ups so they were misleading and inaccurate, stating I was "out of bounds" in a "restricted area" and "ferreting through confidential mail for lieutenants and counselors". Trying to drive the final nail in the coffin, the officer then wrote me a 115 RVR later that same day for "Misappropriation of Institutional Mall". His actions resulted in a fifteen-day CTQ, a two-month suspension from work, threats of termination, lies and lambasting throughout the unit. During the adjudication of the write-up the truth was revealed and I was found not guilty. I was reinstated into my job position and the write-up was removed from my record. This infuriated the officer and his cohorts.

Other incidents of harassment continued but nothing quite worthy of a formal complaint. Then a few months later during another cell search, maps of the San Francisco Bay area were found in my atlas. These maps were issued to me by prison staff and had been in my possession for over five years and through multiple searches, some with highly-trained investigative services unit officers. The maps were never an issue or concern before. But this time these harmless maps somehow became a threat to the safety and security of the institution. So I was immediately terminated from my job and transferred to the Adjustment Center, the

harshest and most restricted unit in the institution. I was then issued a 115 RVR for "Contraband, Escape Paraphernalia". The RVR was adjudicated and I was found guilty of the charge.

I appealed the ruling and filed a grievance listing multiple errors and requested a dismissal. The second level reviewer agreed with my claims but refused to dismiss. However, the 115 RVR was ordered to be reissued and reheard. It was not what I wanted, but it allowed me a second chance to argue my case. While waiting for the rehearing to be scheduled, staff violated several Title 15 rules regarding time constraints, conflicts of interest, performance of duties and the investigative employee officer failed to submit an accurate report containing my statement and witness questions. When the rehearing finally commenced the hearing officer dismissed the 115 RVR up front for all the due process issues. Subsequently, the write-up was removed from my file.

Over a year after the two previously mentioned inaccurate 128 reports were placed in my file I submitted a 602 appeal for their removal. Beforehand, I had been adamantly informed by peers, staff, even my own counsellor, that the officer who wrote the reports was the only person able to remove them from the C-file. So I went through that process of verbally requesting then later writing a Form 22 to the officer, but both were met with negative results. I then decided to put together fourteen pages of supporting documents and submitted my appeal. About a month later, it was cancelled because the appeals coordinator said it "duplicated a pending appeal". The appeal he referred to was a clearly marked exhibit that was part of the supporting documents.

So I filed another appeal on the appeals coordinator for the cancellation, stating he was in egregious error for delaying a timely resolution in this matter, jeopardizing due process and obstructing justice. It took almost three months but the appeal was granted at second level and I could resubmit a new appeal for removal of the reports, even after the appeals coordinator noted I violated the 30-day time constraints for filing eleven months after the incident. After filing a new appeal, it was also returned a month later stating it was cancelled for duplicating a previous appeal. I was upset and very frustrated with the appeals coordinator's blatant mishandling of my appeals. However, I was interviewed by the lieutenant the day before who granted my original appeal. In the end, the original appeal was used and all these additional appeals I filed and the months delaying a final response

were the biggest waste of time and effort imaginable. The warden signed off on my appeal and directed that both 128 reports be removed from my file.

At the moment I am currently waiting response on an appeal filed for the reimbursement of pay lost from my clerk's job after the dismissal of a previous write-up. This appeal is substantiated with solid documentation, and some extenuating circumstances exist. No one knows which way a decision will fall in spite of how well prepared you think you are, but I am trying to remain optimistic. Now that the death row prisoner worker program has been terminated due to staff- and prisoner-related issues, I can only hope that the target has been removed from my back and the harassment subsides, at least for this chapter of my life.

I started off writing about the dissatisfaction and waste of time it is to file a grievance. But after reviewing my own history I realized that I have been somewhat successful at this process. My first appeals were basic trial and error, but assistance can be obtained from peers or specific books. Seek it out. You may experience denial or cancellation and wonder if the appeals coordinator or the reviewer actually reads what you wrote. But be patient and persistent. File again if need be. You will not get resolution if you do not try. If all else fails, after exhausting the appeal at the third level, you have the option to file a writ to the court. My advice is that if you have an issue you feel is important to you, file a grievance. Despite all their fallacies and shortcomings or the obstacles perpetrated by reviewing staff, grievances do work.

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Looking From the Inside-Out

Janus V.

I was in the prison yard on a Thursday, the day after writing class, trying to find a place to be alone. A spot, somewhere in the middle of the grassy area far from the track and picnic tables, seemed the best. After serving six years on a ten-year sentence time alone becomes invaluable.

When I was committed to the women's division of the state prison, everything I had was taken from me. I was only allowed to keep one pair of glasses, one plastic afro-comb and my underwear. From that moment on everything I owned was either purchased from the commissary or issued to me by a clothing officer. I believe the current value of my estate to be approximately $65.

The room I was assigned, my "home", houses six women and two mice. The bunks are made of industrial steel and I sleep on a four-inch mat that is intended to serve as a mattress. A-wing, Bunk E-Room #2; where I live for the time being. It neither is nor sounds comfortable. A good six months passed before I became accustomed to sleeping on that metal slab. At night, when we are all in bed this place could pass for a morgue.

I found, as time passed, I no longer felt attachment to material things. Instead, I started to value those periodic moments of uninterrupted thought – however rare. Having a long conversation about recovery from addiction is another authentic experience that I highly value.

Serving a long sentence often has an everlasting impact on the mind. There is definite need for something that will maintain some semblance of sanity. We, prisoners, all agree; going without a TV is possible, but going without a radio is not. The music ties time into a tangible continuum – "I remember when… my present dreams for the future are…when I get out I want to…"

What goes on inside the mind is the only place that cannot be searched by 'outsiders' unless, of course, one starts talking or opts to share. Hope, dreams and good intentions are safe when *strip-searched*.

> I've seen fire and I've seen rain. I've seen sunny days that I thought would never end, I've seen lonely times when I could not find a friend. *

Listening to James Taylor on the radio reminds me of the good times past and lets me think about those to come. I have been classified at every level of security during my time. However, while I was classified at

minimum status, I had a rare opportunity, one few women in this prison will ever have. The Department of Corrections decided to work in partnership with Habitat for Humanity. As a result, for six months (September 2007 until March 2008) I was part of a 12-woman crew where twice a week – Wednesdays and Thursdays – we worked to build a single-family home for the White family.

Each day I had a crash course in carpentry. I have dug four-foot holes, cut dozens of 2x4's to blueprint specification, and hammered more nails than I ever wish to count. The site supervisor, *Alex* was impressed with the accuracy of my measurements. Therefore, I became the *chop-box* or table saw specialist. Even through the colder months when I was outside cutting studs, cutting window-frames and cutting siding, I was not bothered by the cold temperatures. All I felt was a great sense of confidence in a selfless job well done. With a circular saw and a pair of goggles I *almost* know what it feels like to have a penis.

> Been walking my mind to an easy time-my back turned toward the sun
> Lord knows when the cold wind blows it'll turn your head around. Well
> there's hours of time on the telephone line to talk about things to come…
> Sweet dreams and flying machines in pieces on the ground.

My job as a chop-box specialist continued when we moved indoors to work on the interior of the single-family home. *Alex* pointed to a stack of floor-tile boxes, three-high by three-wide, and handed me a utility knife and a torch. He explained how to heat and cut the tile to fit around tables and doorways. I was left alone with the tools of the trade that the Department of Corrections would never permit a prisoner to have in her possession. Remember, in the mind-set of the Department of Corrections I was capable of burning down a house after murdering all of the occupants. But, instead, *Alex* saw me as a good woman willing to work – a woman good with measurements and details (I wonder if the way to redemption is found through ironic situations).

Many times I would return to the minimum building – my prison residence – tired and sore. A long hot shower and a couple of Motrin was my idea of heaven those days. But, without a doubt, the next morning I would be awake 45 minutes early in my coveralls ready to go. Another day out in free-world full of hope. Another day away from the barbed wire and

industrial steel. Another day to share good-times on out 'outside'. A day on site was a day I wished would never end.

In late March 2008, the project was complete. The White family had a cozy affordable home and we, the 12 women crew, marvelled at the accomplishment. So now I am back inside, the building project was over. I spend my days as a laundry porter; my evenings on the phone with family and friends. As the seasons wear on, my hope has worn out.

By the fall of 2008 depression set in. I started losing my appetite. It, depression, progressed to insomnia. As a result my mood changed. When the holiday season came around, those around me, especially correctional officers, knew something was up. I was agitated, hostile and unpredictable. In prison, this sort of change in behaviour is cause for disciplinary action. I ended-up in segregation for 21 days for verbally assaulting a fellow prisoner and a substance abuse counsellor. Indeed, being combative toward staff is a big no no!

On February 10, 2009, the day I was sent to *seg*, I can clearly recall that I was not in my state of mind. Although I had lost 21 days of *good-time*, it did not seem like much of a loss given I was serving ten years. I had earned six months of good-time working on the Habitat Project; even though it was one of the better times in my life. Yes, I was physically in prison, but, mentally I was both free and happy. From my point of view, no matter where I am, if my state of mind is poor then everything around me seems worthless.

While in *seg* I became horrifically aware of the fact that in only a year, four seasons, I would be released. Some long-timers become overly excited about gaining freedom again, but being the cerebral person that I am I felt scared. I could not help but think about all the *stuff* I had not needed to think about for years while I was a ward of the state. Being under state 'care' had stripped away my self-reliance; it was gone the day I was committed. This cage of a prison designed to confine me had become a comfort. Given I was 'relieved' of caring for my own basic needs upon my sentencing I had become dependent on the state for my day-to-day living.

Housing, food, health care, income, transportation; all the basics most people take in stride in daily living would become a brand new reality for me, once I was released – an ex-prisoner. Where would I live? What would I do to support myself? Who could I trust for help? These hopeless questions became my mantra for my uncertain future. But the greatest threat to my future was, simply, my anger. I was still angry. Over the years as a

private citizen, I learned to suppress anger along with all the reasons why I felt so angry. I dealt with emotional pain by self-medicating. Alcohol and promiscuity was the prescribed remedy for a lifetime of pain.

Before prison, I lived in a state of denial; my lifestyle was destructive. I was a toxic person, incapable of sustaining a healthy relationship with anyone – on any level. I had just one close friend. I was estranged from my family and my romantic relationships usually lasted no more than a year. I reached a point where all I could do was self-destruct. If I continued to carry with so much emotional baggage, anger, it would have consumed the rest of my life.

I understood James Taylor's lyrics: "sweet dreams and flying machines in pieces on the ground". His lyrics resonated with me. Life lost its excitement when hope is replaced by fear and doubt. It only took a few hours alone, in *seg,* in the solitude of that prison cell before I feel into a major destructive episode where my past and present collided. I recall how hot my face felt as my head began to pound and a steady stream of tears soaked my t-shirt.

I cried myself to sleep that first night. Once awoke, I started to cry all over again. I did not realize how many days had passed – they bleed together in the solitude. It took about four days before I had enough strength to eat and shower. For more than 96 hours, on and off, I cried; tears of anger, fear, and pain. I cried for myself – the nine-year old girl who was molested by a family member. I cried for my teenage self, who suffered years of physical and emotional abuse from a dominating grandmother. I cried for the emotionally crippled woman I had become, who feared raising her own children. I cried for the life of *K. D. Wright* I had taken on March 4, 2001. Then, I cried for my own life that had forever changed when I was given a 25-year sentence with 10 years to serve and 15 years suspended or on probation.

In grieving the past and present loss, I felt totally alone – "*lonely times when I could not find a friend*". I had experienced so much and very few living people knew the truth. My secrets were literally driving me crazy.

> Won't you look down upon me Jesus. You've got to help me take a stand. You've just got to see me through another day. My body's aching and my time is at hand. And I won't make it any other way…

I was aware enough to ask for help. My breakdown had become a turning point in my life. I had experienced effective mental health treatment in the

recent past. As a result, I knew my breakdown would not get the best of me. I requested to see the Mental Health Clinician, *Dea,* who had worked with me while I was in *seg* and several months thereafter. She referred me to the prison Psychiatrist, *Dr. Cole* – a good doctor who I hope stays around for a while. The women here in prison need a psychiatrist with genuine concern – someone who cares. The Doc and I agreed on a new regime of medication and activity. I realized it was time to let go of the baggage. But I also learned that letting go does not mean forgetting. My past is, and will always be, a major contributor to who I am today. Yes, I am more than a collection of memories, but the memories are mine; I have a right to treasure all of them and they shape me.

Consequently, after segregation I was downgraded from minimum- to maximum-security. On the second shift of the 21st day of *disciplinary segregation time,* I was transferred to A-wing, room 2/bunk E, maximum security. Before I even had time to unpack my laundry bag and make my bunk the second shift officer on A-wing called out to me with a new prisoner job assignment. Clearly, sick days or vacation time do not exist in prison – we only get *seg*-time.

This year seemed like the longest winter of my life. When it stopped snowing in the early spring it started raining and then it rained some more. Spring and summer of 2009 was just wet! Now, it is early October 2009. I find myself standing in the middle of the prison yard looking from the inside out. It is less than two seasons away from my release. The radio helps me keep time with my hopes and dreams for a new life as a private citizen once again. I have a second chance at living. I do not want to waste it on being angry. If so, I will never be free.

Thanks JT for being such an inspiration at such a major turning point in my life.

Sunshine bright and warm
No murky water colors to corrupt the daylight,
Moonlight clear and cool.
No phantom stalker in the starless night.
Just good morning and good night.

– Janus V.

ENDNOTES

* All musical references are to *Fire and Rain* by James Taylor.

ABOUT THE AUTHOR

I am a bi-racial woman from the United States and proud to be the mother of two beautiful adult children. My journey through change as a prisoner in the Rhode Island Adult Correctional Facility has given me the tools I needed to overcome any adversity I may encounter in my day to day living. Currently, I am working as a Peer Support Specialist sharing my experience strength and hope with men and women in transition. Thank you for your interest in my writing.

Cellmate
Victor Becerra

Getting a new cellmate is one of the most stressful situations a prisoner goes through. I know that law-abiding citizens who have never been in trouble may not understand why that two people living in a six-by-nine-foot cell should have any problems, since, after all, they are both criminals.

One of the fallacies of that point of view lies in the fact that many free people think of a prison cell as if it were a room inside the prison where criminals live, when in reality the prison is like the town, the community in which convicted criminals live. The cell is actually the prisoner's whole house. The cell is your living room, your kitchen, your closet, your shower, your bathroom and of course, your bedroom, which you must share with a stranger – too often, a violent stranger.

Conflicts invariably arise with the arrival of a new cellmate. If free people living with roommates fight over rent, parking space, noise late at night or early in the morning, or over bills, can you imagine living with a violent stranger in the same room, a stranger with different morals, beliefs, habits, even a completely different culture? In prison, it does not take much to start a conflict under these circumstances because the great majority of people in prisons have a bad temper and many have violent tendencies. Have you ever made the mistake of pouring salt instead of sugar into your coffee? We can expect that something bad will happen when you put things together that do not belong together. That is what happens when you get a new cellmate.

Not all convicted criminals are created equal, including prisoners convicted of the same crimes. For instance, if a 20-year-old gang member convicted of the murder of a fellow gang member in a house party is placed in a cell with a 55-year-old man convicted of the murder of his wife of thirty years over a domestic dispute, there will be immediate culture clash. Even the most naïve gang members know that sooner or later they will face prison time, unless they are killed first. They know it and accept it. For the gang member, prison life becomes second nature. On the other hand, the older man enters a new environment in which he never expected to be and with no prior experience. It would be like taking a kangaroo to live in the North Pole. What does the 20-year-old gang member have in common with a 55-year-old cellmate? Nothing but a murder conviction.

If a drug trafficker, a man with plenty of money who lived his life giving orders and is accustomed to doing whatever he pleases, is convicted of

the murder of an associate and placed in a cell with an ex-homeless man serving a twenty-five-to-life sentence for smoking crack cocaine under a bridge, their lifestyles are so different that conflict will inevitable arise. The drug trafficker is a stubborn individual unwilling to change or be flexible. He is used to buying anything he needs or wants, and since he ran a powerful enterprise, he feels it is an honour for anyone to know such an important person. Therefore, in his mind, the homeless man should be proud to be allowed to live in 'his' cell. The homeless man, on the other hand, accustomed to not owning anything of value, may go Dumpster diving, looking for anything he may deem usable for something at some time in the future. Hoarding is natural for someone used to having nothing. Both men lived a criminal life but on opposite sides of the food chain – one as a provider, the other as a consumer. The man with money sees the ex-homeless person as a filthy old man who collects trash, things that the trafficker would not even consider having brand new.

If a 20-year-old college student, selling prescription medication drugs to fellow college students in order to pay his tuition, is arrested and thrown into prison, then placed in a cell with a 45-year-old heroin addict who has been in and out of prison for the last twenty years, their social and educational differences will clash and create tension in the cell. The youngster made a terrible decision in his young life, unaware of the heavy consequences he would end up paying. The older man is simply living day-by-day looking to find a way to get his daily dose of heroin. When he gets it, he will be happy. When he does not get it, the student would be better off sleeping on a bed of snakes and having a rabid dog for a cellmate.

Furthermore, the younger man had better hope that the addict has a way to pay for his drug habit, (in prison the cost is from $10 to $20 per day). If not, he will do whatever it takes to get it. So his cellmate had better check his locker because he will steal from him. Needless to say, the youngster will have a hard time dealing with the addict's behaviour, perhaps a lesson in life that not only the drug abusers suffer the consequences of addiction. For his role, the addict now has the time to think about the harm he caused to the families of the individuals to whom he sold drugs, a lesson he did not learn that while selling drugs to others.

Getting a new cellmate is therefore very stressful. Anyone entering prison should be prepared to encounter some of the most peculiar individuals he or she could ever imagine. They should not rush to get into a fight every time

their cellmate does something unreasonable. Prison is not like the movies, fighting will only get you into deeper trouble. Instead, my advice is to be patient, be humble, treat others the way you want to be treated, and most important, be friendly and respectful in and out of your cell. Prisoners will always need a friend willing to allow them to live in the same cell when they are having problems with their current cellmate.

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The Right to be Unbalanced

Victor Becerra

If I lived to be over one hundred years old, they would not let me go.

According to the Fifth Amendment to the U.S. Constitution, every person accused of a crime has the right to be represented by an attorney. If the accused cannot afford an attorney, one will be provided by the state. The Constitution does not, however, address the competency of that attorney. I honestly believe that most public defenders ranked lower in their class than their opponents, the assistant district attorneys. And since they get paid a salary, there is no incentive for them to walk the extra mile trying to win their cases. Their caseload means they do not have the time, the resources, or often the motivation to do all they can for the people they represent. Why would they? They get paid the same for a case that lasts half a day as for a case that lasts eight months.

I clearly remember the first time I spoke to the public defender in the county jail. I was called to a bright, cold interview room, inside of which were two chairs separated by a table. As soon as I got inside the room, the jail guard instructed me through an intercom speaker to sit down and wait for my attorney. The interview was supposed to be privileged communication, but hearing the guard's voice coming from the speaker on the wall made me doubt the privacy of the conversation I would have with the public defender, since the guard could hear everything I said with a simple push of a button.

As I waited nervously in that cold room, I tried to remember any details from my case that could be helpful for my defence. After a few minutes of waiting, the P.D. showed up and in a tone colder than the room, he introduced himself. Then, without giving me an opportunity to say anything, he proceeded to tell me his plan: "I spent a lot of time reading your file, a lot of time during the weekend, about two hours. And I think you should take a deal: fifteen-to-life".

As soon as I heard that, I knew I had no chance of winning my case. I had no doubt I would go to prison. The only question now was for how long. At that time, my English was not good enough to communicate what I had in mind. My vocabulary was very limited, especially with legal terminology. Even worse, I had no idea of the new laws that were recently passed, such as Proposition 8, better known as the Three-Strikes law, which not only gave repeat offenders life in prison, but also gave consecutive sentences to others. Making it effectively a One-Strike law. Surprised that he just wanted me to accept a fifteen-to-life sentence without asking me a single question,

I foolishly asked if he wanted to hear my side of the story? He looked at me as if I were an idiot. How dare I insult his professional expertise! He took a deep breath, as if he were counting to ten before answering so he would not explode in rage because of my audacity in challenging his plan. Then, he said, "I told you, I read the charges and the police report, and I think you should take the deal".

In my erroneous belief that he was there to defend me. I spoke once again: "But—everything you read is what they say I did. They are against me. You don't want to know my side of the story?" He rolled his eyes, as if telling me that my side of the story did not matter. There was nothing else I could say. He was there to do the necessary paperwork to expedite my entry into prison. He was not interested in wasting his time listening to my whining. He had a lot more cases to deal with. Then he told me to think about the deal and that he would contact me in a few days to get my decision. "You'll probably do only twelve years and nine months of that sentence". After that, he got up and left the room. Somehow the room felt warmer after he left.

For some days, I thought about taking the deal, then things began to go downhill fast. The public defender, or public *pretender*, as they are also known, called me and told me the deal had changed to add six more years. Two weeks later he called me again and told me the deal had changed once again to add 16 years to the original offer of fifteen, for a total of 31-to-life.

"Who was killed? Who was tortured? Who almost died?", I thought, trying to make logical sense of the changing plea offer. The frightening part was the counterfactual premise that in this country, the accused is innocent until proven guilty, contradicted by the ease with which a defendant is convicted and sentenced to prison or death – unless of course, the accused is rich or, especially, if he or she is rich and famous.

Faced with the possibility of going to trial, I asked the P.D. how many other prisoners he was assigned to represent. He told me, "Not too many at this time. About 60".

"What about the Assistant D.A.?", I asked. "How many cases does he have?"

The P.D. said, "Yours, and a murder case".

I quickly realized that my only chance of not losing everything would be to tell the truth. I told the P.D. I wanted to go to trial and tell everything that happened, the way it happened. The jury would get to hear my side of

the story and decide accordingly. There was no physical evidence with the exception of a phone tap that appeared damaging, but I could explain what was said and could prove it with the right translation. Any other thing that appeared strange was explainable if only I had been asked. But no one ever asked me. Along with legal representation, the Constitution provides for a criminal trial for every defendant who chooses not to plead guilty. My P.D. had no choice but to take my case to trial, even as he continued to try to convince me to plead guilty.

Before my trial, I told the P.D. that the phone recording the police were using against me was not properly transcribed. But he insisted it was. I know it was not because some things spoken in Spanish were written as "unintelligible". Had they used a bilingual transcriber they would have heard the reason why I said what I said. But they only transcribed what was said in English.

Later, I told him to go interview a couple of witnesses who could clarify or support what I was saying. He said he could not do that because they were "friends" of the victim. I may be extremely naive when it comes to the law, but I doubt that it is illegal to knock on a door and ask a person if they would like to describe what they witnessed. The P.D. did not call anyone to testify in my behalf. No one. At the trial, everyone who took the stand testified against me. Witnesses who disagreed with the prosecutor's witnesses were never called.

Obviously during the trial, everything looked terrible. Sometimes I thought the Assistant D.A. was speaking about a monster from the movies. Then I remembered he was talking about me. The witnesses lied and exaggerated many things and strategically "forgot" to mention anything that would explain key factors in the case, which could have helped me. I knew it would be very hard to be on the stand trying to defend myself, but I knew I had to do it. The prosecution witnesses said terrible things about me. I hoped my P.D. would make the time to prepare me to tell my side of the story on the stand. But at the end, he told me I would not get on the stand.

"What do you mean?", I nearly screamed. "You heard what they said. I need to defend myself!"

"No, no", he kept insisting. "There's no evidence. Plus, I don't want to put you on the stand to face a very experienced Assistant District Attorney".

Before the jurors left to make their decision, the judge instructed them that each testimony of the witnesses could be taken as evidence, and that

would be enough to find me guilty. It would therefore be impossible for them to come back with anything but a guilty verdict.

I looked at the P.D. and said, "You knew this and you didn't let me defend myself? I need to testify!"

His only response was, "It's too late now". Having me testify would take another two days of his busy schedule. He just wanted to get my case over with.

At the end, it would have been better for me to take twice the original deal they offered me. I practically got a worse sentence than a life without parole, which means I will not go before the parole board until I have served thirty-two years behind bars. I believe society would be surprised to know how many prisoners get sentenced to death in prison, that is, sentenced to a number of years that keep them locked up until they die, even when they have not killed anyone, with so little evidence and without the proper representation. My P.D. never asked me to tell him exactly what happened. He never heard my side of the story. He did not need to. He had read it from the police report.

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Entrepreneurial Prisoners

Daniel Johnson

In my 44 years, I have lived all over the United States, from New York to California. I have been to Texas on four different occasions – and ended up in their prison system four times! In all honesty, I am one of those people who have never been arrested while sober. Most of the men I have met in prison, who continually struggle to break the cycle of recidivism, would give their right arms to discover the one thing that would change their lives and keep them out of trouble. I am blessed to know precisely what obstacle I must remain on top of: alcoholism. Therefore, I am gratefully committed to sobriety and recovery.

Too bad I had to spend sixteen years behind bars to finally surrender to reality. I also happen to be one of those people who, while joining up and attending eagerly enough, just do not seem to take or "get it" when it comes to those multitudinous programs that saturate the carceral milieu. I have tried everything. However, I will not cite the various avenues I took to no avail because every one of them is valuable and useful – to a mind/heart that is ripe for transformation. The time must be right.

The intent of this short piece is to share two elements that have come to dominate my consciousness in a profoundly positive and life-changing way. The first is, believe it or not, a program (yeah, I know). The second is the opportunity I have found to build a business that will provide many other prisoners with a change to give something beneficial to society – namely, their artwork and writings.

Here in Texas, I am fortunate to be a part of a rather unique initiative called the Prison Entrepreneurship Program (PEP). Based in Houston, PEP is a 501(c)(3) non-profit organization that was founded in 2004 and recruits this nation's top business, political and academic talent to work with selected current and former prisoners. The stated goal is to create servant-leaders who are dedicated to transformation through education, mentoring and entrepreneurial passion. More than a thousand CEOs, senior executives, venture capitalists, and private investors have sacrificed their time and money to ensure the very best results.

The Texas Department of Criminal Justice does not run this program; it is privately funded and operated. Donations come from corporations (15 per cent), individuals (35 per cent) and foundations (50 per cent). No government funding is solicited or provided. A large number of donors are themselves graduates of the program who, having established a successful life in the free world, give back heartily.

There are about 800 graduates from 17 classes, often described as MBA boot camps, each cycle lasting approximately six months. As a member of Class 18, I graduated alongside more than 80 others in December 2012. And what is more, my prison term expired weeks after that and I walked out the door with no parole. But it did not end there. In addition to receiving the education of the in-prison curriculum – hundreds of hours of lectures on creating profitable business plans, understanding financial analysis and budgets, writing résumés, perfecting job-interview techniques, developing speechmaking skills with the help of Toastmasters International, gaining computer skills, handling corporate bookkeeping/accounting, passing weekly exams covering material from the numerous textbooks which are assigned – graduates even receive help following release from prison.

Since its inception, PEP and alumni have demonstrated a less than 5 per cent recidivism rate. Graduates have started more than 100 new businesses. PEP has a professional network in place to ensure that their members have a safe place to live, upon release, and other needs met. The employment rate for our participants is 98 per cent within 60 days of release.

In less than a year, I am to launch a small, independent publishing company that will specialize in handling the artwork and writings of prisoners. I believe creative people behind bars need to be discovered; they have stories to tell and visions to share. Unfortunately, when prisoners produce lasting art and literature, the preponderance of their creations never see the light of day, which only professional publication can grant. I am seeking not only short pieces for compilation but also full-length book manuscripts: novels, autobiographies, memoirs, collections of essays/short stories, biographies about other prisoners and the like while in prison, I would love to share it with the free world.

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Freedom Relearned

Jesse J. Self

"Self, you're the one getting out?", the escorting officer asked with more disgust than inquiry.

"Yeah".

"Well, aren't you fucking giddy!"

I wanted to tell him to go fuck himself, and in retrospect, I wish I would have. Officer Bowman had given me more troubles than any other officer during my bit, but after 15 years, 5 months, and 25 days I just wanted to leave as quickly as possible. The Parole Board had granted my release just 1½ hours earlier, but as long as I was on the prison grounds, I still felt like a prisoner, so I swallowed my words.

My family greeted me in the parking lot and after numerous hugs and tears. We hurriedly departed to separate vehicles, my parents in one car, and my two brothers and I in another. As soon as my brother, Luke, began driving, something felt amiss. At first, I thought it was just the fact that I had not been in a car since 1995 or that my brother was behind the wheel. Before I went away, he was eleven years old, so in a sense, I felt as if a child was chauffeuring me away from the prison. Luke and my other brother, Bryan, immediately started showing me their I-pods, MP-3 players, and cell phones, none of which I had ever seen before other than on television. We were not even a mile away from the prison when I yelled, "Pull over!"

I barely made it out of the car before leaving my last remnants of prison food on the side of the road. Afterward, we found a McDonald's where I could get the taste of puke out of my mouth and finally fill my stomach with something other than Ramen noodles.

Once inside, I was caught off guard by the sheer number of choices to make for even the most mundane task. "Jesse, what do you want to eat? My treat", Luke offered. I stared at the menu board bewildered, trying to calculate all the options in my head, but soon became paralyzed by the superabundance of choices. "Come on, what do you want?", Luke persisted, while the cashier stared incessantly. There were dozens of options. How could anyone decide so quickly? The only choice I ever had to make with my meals in prison was whether I wanted Kool-aid or water.

"Just give me a vanilla ice cream cone".

"That's it?", Luke asked a bit surprised.

"Yeah, that's it". I chose the ice cream because it was the simplest thing to order and I felt the budding of a headache from trying to calculate so much unfamiliar information so quickly.

My family took me to the Lexington Fayette Mall to shop for some clothes before driving me to Chicago. Once inside, I made a trip to the restroom. Riding in a car made me feel as if someone had grabbed a hold of my stomach and shook up its contents. Sitting on the commode, I became startled when a guy came in and began using the adjacent stall. When he sat down, his right foot was about twelve inches from mine and my first thought was of Larry "Wide Stance" Craig, the Idaho politician arrested for soliciting gay sex from an undercover police officer at an airport restroom a few years earlier. Was this man about to tap my foot with his? I had not been that close to someone while using the bathroom in many years, so I felt a little anxious. As I stood up to leave, my nervousness exploded when the toilet flushed itself. I had never heard of a self-flushing toilet. For a moment, I thought somehow this guy had reached into my stall and pushed the toilet lever. "What is this guy trying to do?", I thought. After looking up and around, I realized there was no way he could have flushed my toilet. Fascinated, I started standing up and sitting down, standing up and sitting down, while the toilet flushed over and over (I am sure to the amusement of the other restroom occupants). After I left the stall, I proceeded to wash my hands. When I saw no handle, I figured it too must operate by some sort of sensor. I was getting the hang of things now, so I put my hands under the spout and sure enough the water began spewing out. As I washed my hands, I studied through the mirror what appeared to be some guy behind me attempting a magic trick around the bottom part of a dispenser. Next, I witnessed a paper towel shoot out and realized that the dispenser worked much the same way as the toilet and sink. I had a few drops of vomit that had splashed on my tennis shoes earlier, so I put on my best David Blaine act and copycatted the guy's actions before me. Waving my hand magically around the dispenser, I procured a paper towel, used my newfound skills to dab it with soap and water, and bent over to wipe my shoes. As I did, the blow drier behind me turned on and started heating up my rear. Perplexed, I stood up and realized when it shut off that the blow drier also operated by sensor. Continuing, I bent down to wipe my shoes and my butt set the blow drier off again. Within the first hour of my release, I had managed to embarrass myself in a public restroom. I should have had enough sense to know to move over after the first time, but then I had not yet mastered the use of the blow dryer.

At the mall, my family was inquisitive: "Where do you want to shop?" "Where do you want to eat?" "What do you want to do?" Each question spun me in circles. I was accustomed to being told what to do, and their questions were so dizzying that for the moment I just wanted someone to take charge and guide me. It was not so much that I could not decide these things on my own, but rather that I had not been able to make many choices – let alone open-ended choices – in over 15 years and it was excruciatingly difficult to suddenly be able to do so with ease. Prison robbed me of many things, but most acutely it stripped me of the ability to make effortless decisions. What used to be day-to-day and elementary became complex algorithms that were too time-consuming and mentally exhausting to work out in my head. I looked down at my shoelaces that had come undone but my brain was so worn down by calculations that I lacked the mental stamina to tie them. I thought better of asking one of my brothers to tie them for me, knowing I would be the butt of a long line of family jokes like: "What's wrong bro, did you forget how to tie your shoes in prison?" Rather than submit myself to such ridicule, I left my shoelaces flapping around all day.

The first year I was out, I still thought much like a prisoner. On the inside, prison rules required me to have my khaki prison uniform tucked in anytime I left my cell. Failure to abide by the rule could result in 60 days of solitary confinement. As a result, for most of the first year I kept reaching down to make sure my shirt was tucked in before leaving my apartment. An equally serious rule was the mandatory wearing of my prison ID on the upper left side of my shirt at all times. Despite my most valiant efforts, I could not shake the feeling that I was forgetting something every time I left the apartment without my ID. To get rid of that dreadful feeling of "missing something", I decided to carry around my prison ID in my back pocket. It worked! For almost a year, I carried it around everywhere I went. Even the way I used my eating utensils was reminiscent of prison. Almost a year after my release passed before I noticed that instead of stabbing my food with the tines of my fork, I still ate as if using a plastic spork – a plastic combination of spoon and fork used in many prisons – scooping up all my food.

Sometimes innocent words evoked prison images. One afternoon while shopping at Wal-Mart, I did a double take after misreading a sign that said "intimate apparel" for "inmate apparel". When others referred to their phone as their "cell", I got a mental image that did not consist of a dial pad. Prison life had so affected me that over six months elapsed after my release

before I first had a dream that I was not in prison. Instead, I dreamed that I was seriously injured in a plane crash. When discussing this predicament with a friend, I was taken aback when she referred to my prison dreams as nightmares. Instinctively, I corrected her, only to quickly concede that yes, they were, in fact, nightmares. To me, they had not felt like nightmares at all. They felt normal.

I found myself constantly bungling the pronunciation of words that I knew, words which meanings I had discovered through reading every newspaper and magazine I could get my hands on for 15 years, but words I rarely heard pronounced in prison, let alone correctly. The richest prisoner dialect probably consists of one-third the intelligent words the average person hears in the free world. As a result, I once drew a blank stare from a friend when "hors d'oeuvres" came out sounding something like "whores de vors". Another time I mentioned paying "home-age" instead of paying "homage" to the memory of a friend who had recently passed away. Then there were words that otherwise would have been familiar, but for lack of circulation in prison, I had not become accustomed to using. I would refer to navigation devices as "UPS systems". I would get "Red Eye", "Red Door", and "Redbox" mixed up, sometimes using them interchangeably, and eliciting giggles from fellow Chicagoans. None of these even existed prior to my incarceration.

My post-release experiences consisted of more than just funny memories and social blunders, however. Somber moments have also accompanied my reintegration. I have been out for 22 months now, yet I still encounter triggers that take me right back to the familiarity of prison. Around a work site, for instance, when I see caution tape, I instinctively look on the ground for blood. For 15½ years, caution tape meant someone had been stabbed. Sometimes people's faces serve as triggers. It is not uncommon for me to see a face that closely resembles an old friend from prison. If his features are convincing enough, for a fleeting moment, I feel that rush of excitement that comes from reuniting with an old friend, then just as quickly, become saddened by the realization that it can not be him. The pangs of sadness do not go away easily when it is a friend who still has another ten or more years to serve.

Even without the visual reminder, periodically, my mind still wanders to those friends in prison I left behind: *Did Torian make parole this month after 19 years? Was Mike's request to visit his mother's funeral approved by*

the warden? Did Bobby and his wife manage to work out their relationship problems through letters and 15-minute phone calls? Other times I spend hours agonizing over those who went up for parole the same day as I but were denied. Parole decisions are entirely arbitrary. By pure chance, I had a Board member who worked for the Department of Education for 32 years and, in applauding my educational endeavours, advocated for my release. Others were not so lucky. Some prisoners got serve-outs or lengthy deferments, leaving them to do 15 or more years in some cases. The sight of tears bursting from their children's eyes upon hearing such heart-wrenching news still haunts me, as does the resignation on the prisoners' faces afterward. Sometimes the images are fleeting; other times I struggle to shake them from my mind.

For 15½ years I was not allowed to be outside at night. I used to lie in bed for hours staring through a barred prison window, dreaming of enjoying the night air. Naturally, upon my release one of my favourite pastimes quickly became middle-of the-night walks. For a good six months, I explored a different area of Chicago at night, simply because I could. Everywhere I went, however, I was hyperaware of my surroundings. I walked at all times of the night, even though I felt like someone would jump out from behind a tree or bush every second. Headrests in cars easily spooked me. I initially mistook them for people's heads and wondered what they were doing in a car at 3:00 AM with the lights off. I felt vulnerable. When it came to crossing in front of cars stopped at crosswalks, I felt the need to look the driver in the eyes to gauge his intentions before proceeding across the street. I had seen enough violence in prison to be taught that vulnerability can be dangerous and the vulnerability I felt upon my release frightened me. It was well over a year before I felt comfortable enough to walk down three flights of stairs without first locking the apartment door behind me just to check the mailbox.

Searching for a meaningful job was another challenge. For months I struggled to find anything, but I was also reluctant to lower my standards. I tutored adult basic education, as well as associate-level college courses for most of the last eight years in prison. I had hoped to continue tutoring upon release, but I soon realized with my record I would be lucky to find any kind of employment. I must have submitted a couple hundred applications within the first few months of my release, only to receive few possible leads. My lack of "real world" experience led me to many mistakes, and perhaps being

too forthcoming with prospective employers was one of them. Several times I received very positive – almost promising – vibes from hiring managers only to never hear back, despite my persistent follow-ups. I am sure it was the discovery that I had been incarcerated for over a decade and a half that gave them second thoughts. After submitting an application to Borders, I even had the manager call me off to the side during a follow-up and caution me to "change a certain answer" on my application if I wanted the job.

Perhaps naïvely, I never thought I would be faced with having to hide my incarceration to secure employment. My hesitancy with taking such a road has as much to do with practicality as principle. How can I hide something that occupies such a presence in my past? I am 36 years old and have spent all but one of my adult years behind bars. If I try to keep my incarceration a secret, I am essentially barred from linking myself to any past tense verbs. But even more importantly, I do not want to live a life with a secret past, constantly fearful of getting fired should someone discover it. Openness tastes better than secrecy at this point in my life. And again, perhaps I am naïve, but I still cling to the faith that most people believe in giving second chances.

All in all, some days I feel like a member of society, contributing my part to the community. Other days, I feel like a tourist in a foreign land. Sometimes when I share my prison experiences with others I get stuck in mid-sentence using a phrase like "where I *came* from", and I am unsure whether I should instead say "where I *come* from". The latter conveys the sense that I have not yet arrived and the former sometimes feels too premature to use honestly. "Arriving" is not something that occurred in an instant. I did not feel like a free man the moment the handcuffs were removed and the metal door clanged shut behind me. In fact, taking my first step on free soil was not much different than any other step I had taken in the previous 15½ years. The prison shackles were removed from my ankles, but I still wore the fetters of mental imprisonment. I swallowed my words to Officer Bowman more for fear of authority than wanting to leave quickly, even though he no longer had authority over me. Thus, for me, freedom was – and continues to be – a gradual process. Only a slow shedding of my prison habits and mind-set will enable me to feel like I am free. Like I belong.

ABOUT THE AUTHOR

Jesse J. Self was 19 years old and a *much different* person, when he went on a two-week robbery spree in Kentucky. Caught up in a small draconian town during pre-election times, he was sentenced to 70 years in prison. Jesse served 15½ years of the sentence before being granted parole and released on September 21, 2010. After two years of freedom, glimmers of hope are peaking through the horizon. In May 2013, he graduated *summa cum laude* from Northeastern Illinois University, a double major in Interdisciplinary Studies and Social Work. Jesse recently started working for the Illinois Coalition for Immigrant and Refugee Rights (ICIRR), and next year – if all continues well – he will begin advanced standing graduate studies at the University of Chicago's School of Social Service Administration. His hope is that writing will continue to give him new insights as he moves forward and that it will take him places far removed from the dank prison cells where he has spent most of my adult years. He can be reached by email at jesse.self720@gmail.com.

RESPONSE

A Few Words on the Last Words of Condemned Prisoners

Robert Johnson

Last words are the existential centerpiece of executions. The prisoner, by his last words, gives meaning to the execution as the culmination of his life (see Johnson *et al.*, 2013). His life has come to this place, the death house, a remarkable fact about which remarks are warranted. Whether eloquent or inarticulate, terse or rambling, the prisoner's last words are the last word about his life. Even saying nothing is saying something in this context, communicating that the person at this fateful juncture of his life is rendered speechless by the enormity of the violence that awaits him, made mute by the unspeakable cruelty of the killing process.

I do not use the words enormity and unspeakable here without cause. In the execution chamber, a healthy person, often young and fully under the control of the authorities, is put to death by an execution team that works from a rigid script, captive to rote, unfeeling procedure (see Johnson, 1998). The execution team performs in front of an audience of people – for the most part, official witnesses and correctional officials –who look on and do nothing, say nothing. They watch the prisoner die, then file out and go home, carrying the scent of the death house with them out into the free world. That scent, which my field research on the execution process led me to describe in a poem as "a / devil's brew of / mildew, flesh, and / fear", has a way of lingering in the sense memories of those touched by executions (Johnson, 2010, p. 140). Poetic justice, perhaps, courtesy of the death house.

MODERN EXECUTION RITUAL

Modern executions follow a macabre process that includes several rituals (see Johnson, l998). One ritual is the last meal. There is a haunting element of abandonment at work during the last meal, an ostensibly charitable undertaking that offers the prisoner a moment of autonomy – he can choose his meal, even ordering a steak if one can be found in the prison kitchen, and he can eat the meal or not eat it, even share it with the death watch guards if he is so inclined (see, for example, Johnson, 1998; Meyer, 2011). As a general matter, the condemned prisoner eats alone, even though there are others at the table or in the room or just outside the cell, depending on the logistics of last meals,

which varies from prison to prison (Johnson, 2003). The bottom line is this: the condemned man eats, others watch, no one lifts a finger to help this fellow human being within arm's reach, clearly in need, on display like an animal in a zoo, if one can imagine a zoo that feeds and then kills its inhabitants.

In a poem called "The Last Supper", undertaken as an exercise in ethnography, I described the hollow, chilling experience of observing a last meal. The man ate his last meal alone in the death house, watched from the area immediately beyond the bars of his cell. Some observers, notably prison officers, were a mere foot or two away from him, me a few feet farther back, observing the officers and others observe the prisoner, and also observing the prisoner as he ate his last meal. Here is what I saw, and felt, and learned from my observations, written in the present tense to best capture the scene:

A fried steak, diced into little squares,
arrives at the death house
neatly reassembled, like a puzzle,
laid to rest in the center berth
of a standard white Styrofoam box
bordered on one side by soggy, sagging fries,
on the other by wilted greens, curled and brown,
long past their salad days, like the man himself
who ordered this meal as the sad celebration,
culmination, of a dreary, wasted life
that it is even now slipping away
as he ages before our eyes right there in his cell,
called "the last night cell" in some prisons,
"the death cell" in this one…
-
He eats alone with a plastic fork –
no knives for the condemned,
no dinner companions for the condemned –
chewing carefully, kneeling by his bed, as if in
genuflection before the raw power of the state,
his meager meal placed carefully on the steel gray metal bed,
sitting precariously on the top sheet, drawn tight
like a sail battened down for heavy weather.
-

We look at each other tentatively, almost furtively,
lawyers, chaplains, even officers speaking in low tones,
words directed toward the ground,
as if we are greasy, dirty, our mouths dry,
tongues swollen, sticking to our teeth,
-
our noses stinging from the scent of corruption,
the bittersweet stink of fear in the air,
in our hair, on our skin, in our clothes.
We are guests at a living wake,
where the dead live,
where the dead see,
look you in the eye and see nothing,
see no one will save them
see they are utterly alone.
-
The condemned man finishes his meal,
says 'thank you' to the officers who fed him dinner,
and later walks with them to his execution, on schedule,
dead before the stroke of midnight. We go home,
stomachs empty, hungry for sleep.

– "The Last Supper" (Johnson, 2010, pp. 148-149)

It is remarkable, at first blush, that a condemned prisoner would say "thank you" for his last meal. But many do, because even a crumb of kindness feeds a hunger in the human heart for compassion, even the appearance of compassion. Sometimes the words "thank you" are the sum and substance of the last words of the condemned, spoken with feeling and meant to include family and friends. However, dysfunctional these relationships may have been in the world, they are valued in the death house for the glimmers of hope and affection and loyalty they embody. Thanks are extended to the execution team members as well, both behind the scenes and in formal last words; some officers are appreciated for the small civil gestures that soften the harsh protocol of the execution process: "Thank you. Thank you my last meal. Thank you all for ending this nightmare with a hint of human feeling, genuine or not, in an otherwise dehumanizing process that unfolds like clockwork against a backdrop of utter indifference". Loved ones are

grateful for testimonials of love in the last words of the condemned. To my knowledge, no one in authority is grateful. No one in authority has ever said to the prisoner, "You are welcome". The reason is simple: condemned prisoners are not welcome in the death house. They are there to be killed, even if we are civil about it. A night in a death house with an execution team drives home this sad and sordid fact. The paradoxical quality of gratitude to staff in the death house leaves them speechless, so they say nothing, speaking volumes.

MOMENTS OF HUMANITY

Last meals and last words are moments of humanity in an otherwise inhumane ritual (see LaChance, 2007; Meyer, 2011). Last words, like last meals, offer a moment of autonomy on the threshold of death, allowing the prisoner to bring meaning to an execution that is otherwise out of his control. Research on the content of last words has unearthed several specific themes, notably love and gratitude for those family and friends who have stood by the prisoner until the end, and regret, sorrow, and guilt over the harms the offender has wrought (Meyer, 2011, p. 188). Last words are delivered as a kind of speech. The warden looks to the prisoner and asks, solemnly, "Do you have any last words?" Most condemned prisoners do, saying something like "Yes, I do", at the outset, and then starting, in the manner of all speeches in all contexts, by thanking those who have come to support them, often thanking God as well, offering up acknowledgements and statements of love and gratitude to man and deity that sometimes have the feeling of an Oscars ceremony speech, albeit a dark version of one. After this opening gambit, comments usually follow having to do with how the prisoners understand the fateful proceedings that are unfolding even as they speak, after which the speech ends with some variant of, "That's all I have to say". In Texas, home to more executions than any other state, the warden then gives the signal for the lethal chemicals to be released. The prisoner thus has, literally, the last word in the matter of his execution (LaChance, 2007).

In between opening thanks to loved ones and closing remarks, the gist of these last-words speeches is a statement by the prisoner about his understanding of what is happening to him and why, typically framed as a long goodbye and often rendered in a thoughtful, even philosophical way. The subtext is that this man before you is a decent human being whose life

is worth something, certainly worth remembering. Here is an example of last words, given by a man named Ronald C. O'Bryan, which illustrates many of the themes we have discussed:

> What is about to transpire in a few moments is wrong! However, we as human beings do make mistakes and errors. This execution is one of those wrongs yet doesn't mean our whole system of justice is wrong.
>
> Therefore, I would forgive all who have taken part in any way in my death. Also, to anyone I have offended in any way during my 39 years, I pray and ask your forgiveness, just as I forgive anyone who offended me in any way. And I pray and ask God's forgiveness for all of us respectively as human beings.
>
> To my loved ones, I extend my undying love. To those close to me, know in your hearts I love you one and all. God bless you all and may God's best blessings be always yours.
>
> Ronald C. O'Bryan
>
> P.S. During my time here, I have been treated well by all T.D.C. personnel.
> -– Texas Department of Criminal Justice, Executed Offenders (2013)

O'Bryan's last words portray a man who is thoughtful, rational, even wise, as well as compassionate, forgiving, and loving. His execution is a miscarriage of justice, he claims, but not all executions are wrong or "mean our whole system of justice is wrong". To err is human, we learn; he, like us, is a human being and must live, or better, die in this imperfect world. In a spirit of reciprocity, he offers forgiveness to all implicated in his wrongful execution, just as he asks forgiveness from others for the wrongs he has committed against them, even if the crime at issue is not one of those wrongs. He asks God's forgiveness, including himself with all others under God's dominion "as human beings". He reassures his loved ones and wishes them well in the form of God's "best blessings". In closing, he reaches out to the staff members who have housed him on death row and are now about to carry out his execution: "I have been treated well by all T.D.C. personnel". O'Bryan's last words, like many if not most last words, "mix memory and desire in a last-ditch effort to transform

a life that was a wasteland of loss and violence into a life worth having lived and, perhaps more importantly, a life worth remembering after the offender is gone" (Johnson *et al.*, 2013, p. 24).

Occasionally, the dominant theme of last words is the persistence of rank injustice in life, expressed in angry finger-pointing. These last words tend to be disjointed, even rambling, lurching alone on waves of pitched emotion. The key element is shifting blame—to others, even sometimes to inanimate objects. Here is an example, from a man named Virgil Martinez:

> Yes I do. Um Abel, Love ya'll, Evelyn love ya'll, Armando and Delia I love ya'll. Do what I told you and you will see me one day. Do that and promise me. First, Veronica's sister. I know what you've been told and that's all a lie. John Gomez killed your kids and sister. I know ya'll love John Gomez but he was a violent man. I wish I would have shot him in the leg, then he would be here. Those investigators were just trying to convict somebody. My gun had a hair trigger. Veronica told me to come and get my herb book and she went to the back of the closet. Her kids had asthma and I lent her the book. She said she would give it to me next time. She didn't want to break up, we still talked. She told me to come over. John Gomez said Veronica does not have the money for your book so don't come over. Me being a hot shot I went over there and I had my gun. I had children and nephews where I lived so I had to keep my gun in my truck for self-defense. Veronica invited me in her house, the kids were still awake fixing to go to bed. I put the gun under my shirt and said Hi to Josh and Cassandra. John Gomez was there he told Veronica that "he doesn't love you". I didn't care.
>
> – Texas Department of Criminal Justice, Executed Offenders (2013)

There is a profession of love at the outset of Martinez's last words, but this sentiment is belied, or at least overshadowed by the overwhelming theme of shifting the blame to others – from the person who allegedly committed the crime, whom he should have shot "in the leg" on the scene, to the monomaniacal investigator in a rigged justice system, to the 'hair trigger' gun he "had" to have for self-defence to protect his children, but which he carried with him into a contentious domestic situation that ended in a bloodbath of his doing, taking the lives of "a 27-year-old Hispanic female, her two children (a 3-year-old Hispanic female and a 6-year-old Hispanic

male), and an 18-year-old Hispanic male". Martinez does not appear to be a man at peace with his crime, his life or his impending death. One imagines him expressing his resentments and minimizing his culpability on the day of his arrest, then nurturing hard feelings over his years on death row, and finally spewing them forth in the death house.

Many capital mitigation experts can identify a host of brutal injustices that help shape the lives and crimes of condemned prisoners (see Haney, 2005) and these factors may well apply to Mister Martinez. But to shape a life is not to determine it. Violence always boils down to a choice, a life-altering choice. A focus on injustice and the bitterness it breeds in one's last words does not serve as an effective means to transform a sordid life into one worth living or remembering. Instead, these negative, even nihilistic last words *document* the wasteland of the prisoner's life and wallow in it. Last words of anger and blame are no doubt offered in the hope that others will be persuaded to think better of the person – to see him more as victim than victimizer – but excuses always ring hollow, perhaps especially in the death house.

Given the arbitrariness of life, not to mention the legal system – especially in capital cases, a closed and arbitrary system unto itself (see Haney, 2005) – it is instructive that thoughtfulness and compassion typically trump resentment and anger in the death house. We all have grievances. At life's end, even in the death house, the more ennobling choice may be to take responsibility where one can, finding meaning and value in the way you played the cards you were dealt in life.

DEATH HOUSE THEATRE

Last words are, in the main, highly rehearsed speeches given under duress on the unusual stage presented by the death house, which serves as a kind of theatre for executions, much in the way a battlefield is a theatre of military operations. Imagine the context. One is about to be killed before several discrete audience groups, typically representing: 1) the victim, represented by a group of witnesses generally happy to see you die; 2) your family, often a dysfunctional group but one that nevertheless stands by you, even though they are hurt – by you and by the process you have dragged them into; and 3) official witnesses, who often feel preoccupied and out of place, a bit like voyeurs with a good cover. Official witnesses come late to a story of violence with deep and sometimes convoluted plot lines. They are largely

oblivious to the human drama unfolding before them – they have been drafted at the eleventh hour into an impersonal process meant to convert the prisoner into an object of execution, a deadly and unredeemable criminal, not a person on the threshold of tragedy who has brought tragedy to others in turn (see Johnson, 1981; Johnson, 1998).

The death house, then, provides a forbidding stage: the audience is varied and, themselves under a range of emotional stresses given the momentous undertaking at hand, hard to engage. Knowing this, or at least sensing this, the prisoner often writes and revises and rehearses his last words in his cell, while he waits to see the death house chaplain. He imagines telling his life story, or at least its denouement, while strapped down to the main stage prop, a gurney on which he is restrained with catheters in his arms, struggling to be heard since the witnesses are off to each side, not easily seen; the supine prisoner can only see the ceiling, unless he cranes his neck left or right, fighting against the restraints. It is a wonder condemned prisoners are able to speak at all, so much is the pressure and so difficult is the task of summarizing a life on the edge of what must seem like an abyss, lethal drugs at the ready, a modern poison potion poised to strike like a chemical Damocles' Sword.

It is one thing, one must suppose, to summarize or remark upon a life that has gone well, cataloguing things and people in which one can take pride. Not so in the death house. Things have gone terribly wrong; lives have been taken, others ruined. The world the prisoner knew, and which knew him, is in tatters, an endless vista of trauma and loss. His suffering may end in the death house, but not so those he leaves behind. What does one say in this situation? Thank you, certainly; in this context, a vast understatement of the debt owed to loved ones. "I'm sorry" and "forgive me" rank high, as one would suppose, and as we saw in the sample last words of Mister O'Bryan, above. Variations on the theme that "I am not that person, that monster, anymore" make up the text or subtext of many, if not most, last words. A few make excuses and point fingers up to the bitter end, suggesting a life of recrimination that simmered and boiled during years on death row, burning away any compassion the prisoner might have felt for others or even for himself, whose deeds he simply cannot face and own. Some crimes, sad to say, are so awful they are incomprehensible, even to their authors. O'Bryan, for example, was sentenced to die for poisoning his young son on Halloween. Who could face that horror

without the cover of a fallible justice system, one mercifully prone "to mistakes and errors"?

Executions are a dehumanizing business. Life on death row is a form of torture that blooms in solitary confinement (Johnson, 1981). After years, even decades of isolation, most condemned prisoners, overwhelmed by the force of the state and undermined by doubt and fear, go to their deaths compliantly, even meekly, "humble men" in the words of the execution team I studied (Johnson, 1998). But for many prisoners, last meals and especially last words offer brief but vital escapes from the crushing momentum of executions, little resurrections from the living death of death row and the death house (Johnson, l981). There is a brief pause in the killing process, and that pause breaks the routine, giving people a fresh view of things, in this instance, a window for expression of profound changes in the self that have emerged from the crucible of life under sentence of death. Simply to survive as human beings, condemned prisoners must find meaning in their lives and in their suffering. They adapt, and in adapting, they change. Last words are meant to testify to that change. This is me now; this is who I am or strive to be, at least now, at least here. Before, I was someone else. Now, I am me; remember me for how I died, not how I lived.

Many, perhaps most condemned prisoners use their last words to affirm that they are indeed new men, better men, men who go to their deaths with some poise, even dignity. The execution process is dehumanizing; condemned prisoners, with their last words, transcend the killing routine and speak their minds. This dignity in adversity, hard won, sets them apart from others in the death house, those workers and witnesses and observers who wonder – I know from experience – if they have not shed some of their own dignity by the sheer and unforgiving fact of their participation in the execution process.

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ABOUT THE AUTHOR

Robert Johnson is a Professor of Justice, Law and Society at American University, as well as Editor and Publisher of BleakHouse Publishing. He is a widely published and award winning author of books and articles on crime and punishment, including works of social science, law, and fiction. He has testified or testified expert affidavits on capital and other criminal cases in many venues, including U.S. state and federal courts, the U.S. Congress, and the European Commission of Human Rights. He is best known for his book, *Death Work: A Study of the Modern Execution Process*, which won the Outstanding Book Award of the Academy of Criminal Justice Sciences. Johnson is a Distinguished Alumnus of the Nelson A. Rockefeller College of Public Affairs and Policy, University at Albany, State University of New York.

PRISONERS' STRUGGLES

The Politics and Practices of a Books to Prisoners Organization

Nyki and Books to Bars Hamilton

There is a shortage of reading material available to imprisoned people in Ontario. In many provincial jails, the library selections are small and worn. In some, libraries do not exist. In federal prisons, though libraries typically exist, most collections are old and worn, with only sporadic replenishments. The situation developed because funding for books inside both prisons and jails is minimal. Unfortunately, things seem only to be getting worse.

The book shortage came to our attention in 2007. To address it, we formed Books to Bars. We developed Books to Bars in Hamilton, Ontario as a grassroots, volunteer-run, community-centred initiative. The purpose is to bring as much reading material into Southern Ontario's prisons and jails as we can facilitate. Working from a core value of creating and strengthening support at the community level has proven successful. We are able to make regular donations to over a dozen jails and prisons, all from donated material. Donations usually consist of between 50 to 300 books, which we collect, package and deliver. Their contents are based on the rules and request of each specific jail, which vary considerably from one to another.

Donations are gathered by various efforts. Year round, books are collected through local businesses who pair with us as donation locations. The locations, usually community hubs such as coffee shops and community centres, all place donation boxes in their spaces for as long as they are comfortable, and this effort has provided us with a consistent supply of material to donate. We also engage in larger events to bring in books and to raise awareness about conditions on the inside, especially about how people do not have access to many books or access to most positive things one could do while in prison. There is nothing but benefits involved with reading and individual learning, not to mention the fact that recidivism rates are highest amongst the people with the least opportunity. So as much as it is about putting books inside prisons, Books to Bars is also about reminding folks outside that jails and prisons are not the place where bad people go to be forgotten. They are full of our community members who will return to our communities. We want them back empowered, not disenfranchised.

One of our favourite events is our annual holiday book drive, where by playing on the name "Books to Bars", we team with local bars, pubs and arts venues that, for the month of December, all collect books for the cause.

The drive ends with a benefit show at one of the involved venues. They are a great way to generate material, spread awareness, and build solidarity with arts, music and social justice oriented communities. The benefits also help to raise much needed funding for our costs.

Until late 2010, we worked almost completely out of pocket, the exception being funds raised from our benefits. Luckily, we have since registered as a non-profit and now receive support from local unions, which include OPSEU Local 240, CUPE Local 3906, Hamilton and District Labour Council (HDLC), and Hamilton-Wentworth Elementary Teachers' Local (HWETL). Most of our funding goes to shipping and delivering donations, but we are beginning to be able to support new projects. One is called *Our Time*, a program that began at the Vanier centre for women, which we support at Grand Valley, Ontario's women's federal prison. *Our Time* allows mothers to video tape themselves reading a book to send home to their children. We think *Our Time* is tremendously valuable. Many parents have no access to their children while they are imprisoned. With Grand Valley being the only women's prison in Ontario, whether a woman is from Kenora or Ottawa, she is imprisoned in Kitchener. Too many people are completely displaced from their families by prisons, and *Our Time* is helping to lessen the devastation. We are thrilled to be supporting it.

Now more than ever, the need for literature behind prison walls is growing. Not only is the number of people being imprisoned rising, but the recent federal budget has significantly reduced what little funding existed for social programs inside federal prisons, which includes funding for books and library services. Prisoner populations are rising across the province, while supportive and education-centred services are diminishing. For groups like ours, it is a huge setback. We are trying to work within a growing culture in a system that is devaluing positive opportunities for imprisoned people. We feel a great concern about the current direction of the Canadian penal system, for not just the further lack of emphasis on these services, but for the future of initiatives like ours to be able to contribute what we can. We rely on the staff of each individual prison and jail to allow our donations in. When a jail has either no interest or no budget for a book program, the likelihood of a call from a group being returned and resulting in a donation is small. We have already experienced this with several jails, who we would like to donate to, but have never been able to. That being said, in more instances than not, we encounter staff members and volunteer librarians who go out of their way to secure donations. We have had on many occasions people from the jails actually

drive to us to pick-up donations when we could not afford to ship them. The problem is that the jobs of and services provided by these individuals are being cut, and devalued, to make way for the oppressive and industrialized conditions associated with mass incarceration.

To all Books to Bars volunteers, the importance of their being rich and diverse selections of reading material inside jails and prisons cannot be overstated. We believe that no person should be denied access to reading, and that access to books are, in fact, crucial for imprisoned people. Many prisons and jails in Ontario confine people to a cell between 14 to 23 hours per day. Reading can help serve as a tool to cope with the emotional and psychological challenges that such confinement creates. No good is done by leaving a human being in a cell with nothing, halting their ability to grow and learn. Yet, this is exactly what is happening, especially in Ontario's remand centres, where people are often held untried for years.

We do what we can to put good books inside prisons and jails. There are challenges, but the benefits of the work are invaluable. We are able to contribute towards the fostering of support, growth, and solidarity, both for individuals and for communities, both inside prison walls and out. This is what we believe in. If at the end of the day one imprisoned person is able to find a moment of peace, then it has all been worth it.

To contact us, please email: bookstobars@gmail.com

Assisting the Wrongfully Convicted
The Innocence Project at the University of Ottawa

The Innocence Project (Projet d'innocence) of the Department of Criminology at the University of Ottawa is a student-run, pro-bono group that seeks to help Canadian prisoners who have been wrongly convicted establish their innocence. Graduate students and faculty members who were concerned about miscarriages of justice in Canada formed this group in 2011 to address wrongful convictions. We are now in a position to accept applications. Prisoners who have been convicted of a serious offence that they did not commit, who have exhausted all avenues of appeal, and who have no other means of help are encouraged to contact us. Once we have been contacted, we will send an application to the individual through regular mail. Each completed application we receive will be carefully screened. Once accepted, we will work together with individuals to establish if there is any "new or significant" information in their case that indicates a miscarriage of justice likely occurred. This is particularly important, as cases cannot go forward without it. New and significant information could be any of the following:

- Anything that establishes or confirms an alibi;
- Another person's confession;
- Anything that identifies another person at the scene of the crime;
- Scientific evidence that points to innocence or another's guilt;
- Proof that important evidence was not disclosed;
- Proof that shows a witness gave false testimony or substantially contradicts testimony at trial.

What is really significant is that this "fresh" evidence was not examined at the original trial or on appeal or if the applicant only became aware of it following the court proceedings. Also significant is that this new information must be reasonably believable, related to the issue of guilt and would have probably affected the verdict if it had been presented at trial. We understand that these are complicated legal standards created by the courts, but once an application is accepted by our group to go forward, we will work very hard at helping prisoners establish their case. Ultimately, our goal is to help prisoners file a review of their conviction with the Criminal Conviction Review Group (CCRG) at the Department of Justice. The CCRG has the authority to review an application and make recommendations to

the Minister of Justice to re-examine a case if they are convinced that a miscarriage of justice likely occurred. We will also be working with criminal lawyers in Ottawa in filing applications, on prisoners' behalf, to the CCRG.

If you believe that your conviction was in error and needs to be re-opened, please write to us at the following address for an application form:

Innocence Project / Projet d'innocence
c/o Department of Criminology
120 University Private
University of Ottawa
Ottawa, Ontario, Canada
K1N 6N5

Visit us on Facebook at:
www.facebook.com/InnocenceProjectProjetInnocence

The Prison Resistance Project Wants to Hear From You

Danielle and Erica

The Prison Resistance Project is comprised of two friends based in Guelph, Ontario, who want to make connections with former or current prisoners who have stories to share about resistance inside. Our end goal is to write a book that shares these stories. We are reaching out to people on the inside to share stories with us.

We recognize that acts of resistance can take many forms; they may be intended to foster change in conditions, to express rage or to create solidarity among people in prison. We have heard stories of about prisoners flooding their cells, hunger striking, breaking sinks, making t-shirts for Prisoners' Justice Day or taking collective action by refusing lockdown. Prisoners have told us that these actions sometimes lead to positive change in their conditions, and are also useful in taking back some of the control over their daily lives and individuality that prison takes away. We are interested in hearing about the actions themselves, events leading up to them and how they affected prisoners.

The strategies of isolation and silencing used in correctional systems are part of a greater system of state control over all our lives, inside and outside prison walls. The Prison Resistance Project aims to document strategies, along with tactics against incarceration to all those who may find them useful and inspiring. For those of us who come from communities that are more likely to be criminalized (like folks who are broke, queer, of colour, addicted or politically dangerous), and in light of our ever-expanding prison industrial complex, it is important to hear how others before us have navigated the prison system. We would be happy to share a bit more of our intentions behind this and who we are.

We want to hear your stories. You can write to us. But if writing is not your thing, we could arrange a phone call. You can also get in touch with us by sending a letter to:

P.O. Box 183
Guelph, ON
N1H 6J6

Towards a world without prison
– Danielle and Erica



Prison Letters

Département de criminology / Department of Criminology
Université d'Ottawa / University of Ottawa
120 Université /120 University Ottawa, Ontario K1N 6N5
email: prison.letters.ottawa@gmail.com
website: prisonlettersottawa.wordpress.com

Announcement

The Prison Letters group is a collective of academics and students who seek to promote prisoners' and former prisoners' access to information and resources. The group receives and responds to a variety of information requests via post or email requesting anything from prisoner supports and resources, prisoner advocacy, general information and anything in between. Although the Prison Letters group does not offer legal or business advice or correspond with prisoners as pen pals, we can offer information about organizations that do.

The Prison Letters group seeks to:

1) Enhance prisoners' access and awareness of resources;
2) Support prisoners in their transition to outside life;
3) Raise awareness of the struggles and challenges of people in and out of prison; and
4) Demystify some of the associated stigma and myths.

Prison systems are not only designed to keep people in, but also to keep the community out. Without access or contact, prisoners are isolated from the supports and information needed to increase their quality of life and reduce potential for conflicts to arise. Academics and students have significant access to information and resources. The Prison Letters group seeks to utilize and share these resources for those who have little or no access at all.

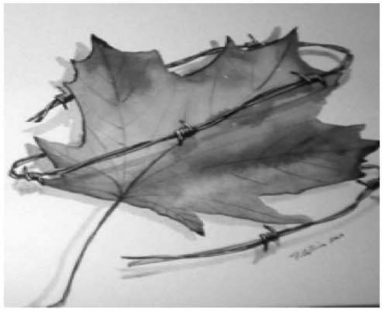
We hope you make use of our services. Feel free to write if you have any questions, comments, or feedback. We look forward to hearing from you!

RESISTING CARCERAL NATION STATES:
THE FIFTEENTH INTERNATIONAL CONFERENCE ON PENAL ABOLITION
(ICOPA 15)

JUNE 13 – 15, 2014

UNIVERSITY OF OTTAWA
ALGONQUIN TERRITORY / OTTAWA, ONTARIO, CANADA

Prisoners on Prisons
Prison Justice
Victims Still
Jails, Prisons and Penitentiaries
Races to Incarcerate
Criminalizing Women
Reproducing Heteronormativity
Mental Health Behind Bars
A Plague of Prisons
Prohibition Failure
Protecting Sex Workers
The Prison Industrial Complex
Another Brick in the Wall
No One is Illegal
(In)security Detention and Killings
Policing and Criminalization of Dissent
Eyes Everywhere
The Revolution Will Not Be Funded
Alternatives to Violence
Abolition Democracy



Voices from the Inside
Solidarity Work Inside and Outside the Walls
Away from Punishment to Meet Human Needs
The New Residential Schools
Legacies of Colonialism
Patriarchy and Gendering Punishment
The Repression of Queers and Trans
Asylums Today
Human Warehousing and Public Health
Ending the 'War on Drugs'
Towards Safety, Rights and Options
Exposing Profiteers of Cannibalism
The School to Prison Pipeline
Contesting Migrant Detention and Deportation
Guilty Until Proven Dead
The G20 in Toronto and Beyond
Privacy and the Surveillance Society
Moving Beyond the Non-profit Model
Safety through Community Building
Working Towards Social Justice

CALL FOR PARTICIPANTS AND CONTRIBUTIONS

Carceral nation states across the world know no bounds as they work to sustain economic, gender, sexual and racial inequality. In the Canadian context, the carceral nation state has used exclusionary practices in a stated effort to keep 'us' safe from 'them' – the 'criminals', Indigenous peoples 'in need of civilizing' and 'assimilation', 'problem' drug users, 'bogus' refugee claimants, 'threats' to national security, political 'dissidents', and other dehumanized and demonized populations.

People currently or formerly imprisoned, victims of state and personal harm, activists, advocates, artists, academics, journalists, professionals, along with others from around the world are invited to take part, in person or by proxy, in ICOPA 15 on Algonquin Territory / Ottawa, Ontario, Canada. During this international conference participants will come together to: 1) share their first-hand experiences of state brutality and tactics of resistance; 2) exchange ideas on how to think about and respond to complex community issues that are often met with costly, unproductive, unjust, and violent interventions; and 3) build international alliances and develop strategies to struggle against state repression and work towards social justice in our world.

The organizing committee invites proposals for individual submissions and sessions at ICOPA 15 featuring art, film, music, photography, plays, poetry, short stories, spiritual and healing activities, essays, papers, reports, workshops, proposals for ICOPA policy positions and resolutions, and everything in between. Proposals can address any theme related to imprisonment, the penal system, other forms of carceral control and the prison industrial complex, including those listed above.

Please include in your package your name, address, contact information, proposal title and a summary of 150-250 words describing the proposed contribution. The deadline for submissions is September 1, 2013. Please send your submissions via email to icopa.canada@gmail.com or by mail to:

ICOPA 15
c/o Justin Piché
Department of Criminology
University of Ottawa
120 University
Ottawa, Ontario, Canada K1N 6N5

FOR MORE INFORMATION VISIT WWW.ACTIONICOPA.ORG

COVER ART

Carmen Mason (cover photo) is a junior at American University majoring in Film and Media Arts with a minor in Anthropology. She has a passion for all things related to media and design, and invests a large portion of her time on social justice issues and community organizing. In the future, she hopes to find a career where she can integrate all of her loves and passions into one.

Carla Mavaddat (cover design) is an undergraduate majoring in Political Science at McGill University with a passion for photography and design. She is originally from Montreal, Canada but grew up in Washington (D.C.). Carla is interested in human rights and social justice, and is a strong advocate against poverty. Her photos have appeared in *Adore Noir*, among other venues. She is the graphics and design editor for *BleakHouse Review* and curator for BleakHouse Publishing.

Cover: "Untitled"

> The cover photo was taken by Carmen Mason in Washington (D.C.) on a cold winter's day and woven into the cover design by Carla Mavaddat to capture the isolation of penal confinement. The cover is meant to capture an outsider's view of the world through the fence, which is frozen over, adding an element of symbolic isolation and distance – a cold boundary that, like a prison wall or fence, demarcates the free world and the world of confinement, with the persons behind the barrier able to see but not touch or enter the outside world.